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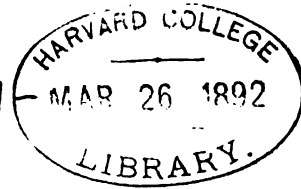
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POLITICAL SCIENCE QUARTERLY.

*A review devoted to the historical, statistical and comparative study
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Plan.—The field of the **Quarterly** is indicated by its title; its object is to give the results of scientific investigation in this field. The **Quarterly** follows the most important movements of foreign politics, but devotes chief attention to questions of present interest in the United States. On such questions its attitude is non-partisan. Every article is signed; and every article, including those of the editors, expresses simply the personal view of the writer.

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STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW.

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THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
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Volume I.]

[Number 1.

THE DIVORCE PROBLEM.

A STUDY IN STATISTICS.

BY

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PREFACE.

THE final form of this monograph is the result of a conversion. My study of divorce was commenced when fresh from the reading of philosophy in Germany, and a month or more passed in turning the leaves of Trendelenburg, Bluntschli, Stahl and the whole line of "Naturrecht" theorizers. Nothing was found to shake the conviction with which I started, that the policy of the Catholic church, refusing remarriage in all cases, is the ideal one for a state to adopt. Then I stumbled upon Bertillon's *Étude Démographique du Divorce* and, underterred by the columns of figures, read and reread it. My eyes were opened and, deserting the high *a priori* road of laying down what marriage and divorce ought to be, I betook myself to a patient examination of Mr. Wright's Report in the effort to understand what they are. My conclusions are contained in the following pages. In their present form, therefore, they are based on two books; their method is derived from Bertillon their data from Wright, and a critic must have keen eyes to detect in them any influence of the first six weeks' reading. If a similar revolution should be started in the mind of any reader by the facts here recorded, I shall be most amply repaid.

It is a cause of regret that I have been compelled so often to differ from, or criticise the results of, the able statistician at the head of the Labor Department. No one can value more highly the work Mr. Wright has carried to success in the face of numerous difficulties. The proof of my admiration, however, must be found in the weeks of toil I have profitably spent over the book rather than in any words of empty praise.

Some errors would be almost inevitable in reviewing so complicated a subject as the divorce legislation of the various states and the changes it has undergone in the past twenty years. If any such have been made by Mr. Wright, and as these pages are going through the press I have received some reason to believe that in the case of Vermont (§ 27) they have been, they will indirectly affect my results. In such cases my criticism would apply to Mr. Wright's evidence for the influence of legislation, and not to the facts. There is no reason to doubt, however, the correctness of practically all the statements of fact in the Report. For this reason, and because their verification would have been in many cases impracticable, I have not attempted it in any case.

In conclusion, I desire to express thanks for their courteous assistance to Dr. S. W. Dike, Secretary of the National Divorce Reform League, to the Librarians of Columbia College and the Massachusetts State Library and, above all, for frequent and full replies to all letters of inquiry, to the Hon. Carroll D. Wright, U. S. Commissioner of Labor.

W. F. W.

MALDEN, MASS., *March, 1891.*

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THE DIVORCE PROBLEM.

A STUDY IN STATISTICS.

§ 1. *Introduction.*

The "Report on Marriage and Divorce" transmitted to Congress two years ago by the Commissioner of Labor, Hon. Carroll D. Wright, might better be entitled a "Report on Divorce." Statistics of marriage are conspicuously absent. "Thoroughly incomplete and unsatisfactory" is the Commissioner's own characterization of that part of his work. Almost its only value is to reflect and reveal the wretched condition of marriage records in most of our states and territories. But the bulky volume is a mine of information on the subject of divorce in this and foreign countries. Like other mines, however, it does not carry its ore on the surface; it needs to be worked. The valuable introductory chapters of Mr. Wright have by no means given an exhaustive interpretation of its figures, while some of his conclusions, indeed, are questionable or erroneous. This will be shown at length in the course of the following argument.

The discussion of divorce maintained in the periodical press since the publication of this Report, has done little more than arouse interest and diffuse a vague conviction that something must be done, perhaps in this way occasioning a move recently made by the New York Legislature, under the inspiration of Governor Hill. A Commission of three has been appointed

in that state to promote uniformity of legislation in our various jurisdictions, and has taken the conflicting laws of marriage and divorce under consideration in the effort to harmonize their differences. A commendable object, surely; but suppose it accomplished, how much good would be done? Would the divorce movement be checked or even appreciably affected?

The publication of the Report and the appointment of the Commission are the most important of recent steps towards divorce reform; but the relation of the two, the bearing of the former on the latter, has not been recognized. In reality, Mr. Wright's volume contains an answer to the question: What can such a commission accomplish for the reform? But this answer does not lie on the surface, nor has it been read truly and clearly in the analysis of the figures. To reach it we must mine into the tables, re-arrange and re-interpret them. The direct object of this paper is to determine the influence of legislation on divorce by conclusions drawn from the raw material of figures now offered for study. The question must be attacked by slow and indirect approaches, starting with a more exact ascertainment of the nature and dimensions of the problem. Accordingly, the first part will be occupied with a determination of its general statistical phases; the second, with a study of the effects of legislation in this and foreign countries; and the last, with some conclusions upon the causes and true remedy for divorce.

PART I.

GENERAL STATISTICS OF DIVORCE.

§ 2. *Comparison between the United States and Other Countries.*

The statistics of foreign countries presented in the excellent Appendix to the Report make such a comparison possible. The largest absolute numbers are reported from Germany and France; each country has about one-fourth as many divorces as the United States. The largest numbers relative to population are found in Switzerland and Denmark, whose divorce rate is but little better than the average for our whole country; six Swiss cantons, indeed, show as high a rate as the New England states. The smallest numbers relative to population are found in Great Britain and Ireland, the British colonies, Canada and Australia, Norway, Russia and Italy. On summing up the divorces and separations in all the countries whose records are given, it appears that more are probably granted in the United States than in all the rest of the Christian world, Protestant, Catholic and Greek; that is, more than in all Europe, outside the Balkan peninsula, all civilized Australia and America. On account of the insufficiency of data this result can be stated only as a probability. Returns are given, however, for all Christian Europe except Spain, Portugal and Greece. Outside of Europe, the Report gives statistics for Canada only, and to these I may add some figures for Victoria* and New South Wales†. In a few instances the data for 1885 are not given, and must be estimated from those of earlier years.

* Victorian Year Book 1880-81.

† Handbook of New South Wales Statistics for 1887.

The following table summarizes the divorces granted in 1885 in the various countries of the Christian world, from which either statistics or an estimate based on statistics can be obtained.

TABLE I.

Canada	12	Holland.....	339	Russia.....	1,789
Great Britain	} .. 508	Denmark*.....	635	Australia†.....	100
and Ireland		Norway *	68		
France	6,245	Sweden	229	Total.....	20,111
Italy	556	Germany.....	6,161	United States.....	23,472
Switzerland	920	Austria	1,718		
Belgium	290	Roumania *	541	Excess.....	3,361

It is very doubtful whether the number of divorces and separations in Spain, Portugal, Greece, Mexico, Central America and South America, all told, would equal this excess of over 3,300. But in the absence of direct evidence the reader must form his own opinion on that point from an examination of the table. So far as statistics are published we may safely go; and we may say that the number of divorces in the United States is considerably in excess of the number *reported* from all the rest of the world.

§ 3. *Rate of Increase.*

The divorce question, however, is fundamentally a problem, not in social statics, but in social dynamics. The number of divorces granted in a single year, either in one country or in the world, is no measure of its importance. It is a rising tide and derives its main significance not from its level at any one moment, but from the rapidity of its flow. The tide is rising steadily all the world over, but nowhere is it so high, nowhere does it rise so fast, as in these United States. Alarmists exclaim that it betokens the ruin of our whole social fabric, and free-lovers exult that the world is advancing towards the light. To the optimist it is merely a temporary set-back, an eddy in the sweep of our triumphant democracy; but to the

* Estimated on the basis of returns for previous years.

† Estimated on the basis of partial returns.

sociologist it is a phenomenon to be neither approved nor condemned, only analyzed and explained.

In attempting to estimate from the statistics the rate of increase of divorce we are met on the threshold by two possibilities of error.

§ 4. The number of divorces is not reported with absolute accuracy, for the records have not been preserved intact in all parts of the country. The Chicago fire destroyed the records of Cook county, the Cincinnati court-house fire those of Hamilton county; and these two are but conspicuous and familiar instances of what has happened in ninety-eight counties* in the course of the twenty years. These counties are charged with 39 divorces for the first year of the twenty, and 1,768 for the last, an increase of 1,729. The other 2,526 courts with complete records show an increase of 13,869. That is, the former, with one twenty-fifth the population of the country, are apparently responsible for one-ninth the increase. To eliminate the obvious error it is necessary to know the true rate in these counties. A simple method of finding it would be to apply to them the average rate of increase in the rest of the country; but a moment's thought will show this method to be inadmissible, because the increase of divorce is closely related to the increase of population, and the latter is much more rapid in these counties than elsewhere. From 1870 to 1880 they grew in population 47 per cent., and the rest of the country 29 per cent. Still further, divorces increase in large cities like Chicago and Cincinnati much more rapidly than population; and the same is true of the southern and southwestern states, which contain a large majority of the other 96 counties. Therefore it cannot be far wrong to estimate that the increase in these counties has been twice as rapid as the average for the rest of the country. On that assumption

*The records of 160 counties are imperfect, but in only ninety-eight have the *divorce* records been so injured as to affect the accuracy of the total increase for the twenty years.

their divorces in 1867 numbered 344, instead of 39, and the total increase in the country for 20 years was 15,293, instead of 15,598. The exaggeration of increase due to this cause is thus about two per cent.

§ 5. The former error referred to the success with which the records once made have been preserved. A second may lurk in a neglect to make the records complete. Some divorces may have been granted, but not entered at all. In the very nature of the case, no proof of such an error, and, *a fortiori*, no measure of its magnitude, can be derived from the Report. One slight indication is all I have discovered. It would be supposed that the court roll would indicate the cause for which the decree is granted with the same uniformity with which the records of criminal courts state the ground of sentence. Yet 10,315 decrees were reported to Washington as issued for "cause unknown." When the rolls show such negligence as this, when even some large states like Pennsylvania, Indiana and Texas record from ten to fifteen per cent. of their divorces without mention of any cause, it may be assumed that occasionally a little greater neglect has omitted the entry altogether. Admitting this to be true, the proportion of such unrecorded divorces was probably greater in 1867 than in 1886, for the records have come to be more carefully kept. In 1867 $43\frac{3}{4}$ per cent. were reported as decreed for cause unknown, but in 1886 the percentage had sunk to less than $2\frac{1}{2}$. Therefore, the error, assuming it to exist, would not only affect the absolute number for each year, but also accentuate the rate of increase, just as the imperfection of the census of 1870 led to an overstatement of the growth in population in the southern states in the following decade.

It is probable, then, that as the years went by an increasing proportion of the divorces granted were recorded; and an increasing proportion of those recorded were preserved until Mr. Wright's investigation. These two errors will enter into the following calculation of the rate of increase and affect the

results. The former might, perhaps, be eliminated, but only by a long and intricate computation for each case and the latter would still remain quite indeterminate. Therefore, a frank statement of them at the start must atone for their entire neglect in the subsequent discussion.

§ 6. *Increase with reference to Courts Granting Divorce.*

Divorces are granted in the United States ordinarily by county courts. A few counties have two divorce courts. A somewhat large number of courts have jurisdiction over two counties. Therefore, the number of courts is closely dependent upon the number of counties, but somewhat smaller. In 1886 there were about 2,734 counties and 2,624 courts. As the number of counties in 1867 was about 2,243, the number of courts may be computed approximately as 2,153. In that year they issued 9,937 divorces, or an average of 4.6 to each court. In 1886 the 2,624 courts granted 25,535 divorces, or an average of 9.7 to each court. So the number of divorces grew more than twice as fast as the number of courts. But probably not one of these courts is occupied exclusively with such suits, and their other business of all kinds must have increased rapidly in the twenty years. They have become more and more crowded with cases, and in danger of falling into arrears with their docket. Many of them have had to face the same difficult question that has recently vexed the national House of Representatives: How shall it reconcile its duty to transact the nation's increasing business with the seemingly incompatible duty of continuing a deliberative body? In this quandary too many judges have treated divorce cases as Congress has treated private pension bills. In both cases, there has been an apparent harmony of interests. In one the pension applicant has wanted to obtain his money, the Treasury to reduce the surplus and the Congress to save its time; in the other, parties to a divorce suit have been seldom at variance in the single matter of desiring the decree, and the judge has often deemed it a matter of private concern, and saved his

time for public affairs or suits involving a real conflict of interests. Nor has he been restrained so much as usual by the danger of appeal; that has been reduced to a minimum.

§ 7. *Increase with reference to the Population.*

The census of 1870 is admitted to be inaccurate and that of 1890 is claimed to be so. Therefore it is difficult accurately to determine the rate at which the population has been increasing. Without turning aside to discuss the question, it may be assumed that the annual increase has been approximately $2\frac{1}{2}$ per cent., and the decennial increase approximately 28 per cent. Of course, the increase of population has varied slightly from year to year, but nothing like so widely as the increase of divorces. The latter has swung between the extremes of a decrease of .9 per cent. in one year, and an increase of 15.1 per cent. in another. But the average is 5.4 per cent. a year, or somewhat more than twice the increase of population. The second decade increased over the first 69.2 per cent.

§ 8. *Increase with reference to Married Couples.*

The old law distinguished two kinds of death, natural and civil. Natural death was the end of life by disease, accident or otherwise; civil death was its constructive or legal termination, as by conviction of treason or admission to a monastery. Civil death is no longer recognized, but to this day a marriage may die either naturally, by the death of one or both of the partners, or civilly by a decree of divorce.

Now, the death rate is found by comparing the annual number of deaths with the number living; and, similarly, the divorce rate, or the civil death rate of marriages, is to be found by comparing the number of marriages dying annually by decree of court with the number remaining alive. For determining the divorce rate, therefore, the number of married couples is as indispensable a datum as the number of divorces. Unfortunately in the United States the former is only a *quaesitum*; no national census has ever furnished this important information.

Therefore Mr. Wright has attempted to supply its place by an estimate. Several states in various parts of the country, Massachusetts, Rhode Island, New York, Michigan and Kansas, have given in their state censuses the number of married couples. Mr. Wright has obtained the average of their results and extended it to the whole country, except a few frontier states. In this way the number of married couples has been determined to be about 18.9 per cent. of the population. With the fragmentary material obtainable, probably no better method of arriving at a result could be devised, and yet this is so inaccurate as to be almost useless. If the number of married couples be admitted to stand in a *constant* ratio to the population, there is no advantage in comparing the divorces with the former rather than the latter. But it is precisely because the ratio is not constant that scientific statisticians insist that the comparison should be with the number of married couples, not with the total population. No fault could be found with Mr. Wright's tables (pp. 148, 149, 160, 161,) if their untrustworthiness were stated. But, on the contrary, the incorrect and misleading assertion* is made (p. 147) that, "in every instance in which it has been possible to test the estimated number by the actual facts, it has been found to be either true or within one-half of one per cent. of the truth." In reality the *ratio* varies from 18.9 in New York (1875) to 19.9 in Michigan (1884), and from 17.1 in Michigan in 1854 to 19.9 in the same state in 1884. The variations shown by counties within the same state are much greater. In Massachusetts (1875), Berkshire county had a ratio of 16.3 and Barnstable one of 22.5. In New York state (1875), New York county showed 17.2, and Cattaraugus 21.8. Obviously these variations in the ratio represent variations more than five times as great in the *number* of

* Here, and throughout this monograph, my criticisms are based on the first edition of the Report. As these pages are going through the press, I am informed by Mr. Wright that this assertion has been corrected for the forthcoming edition. My general criticism on his assumption that the ratio is constant remains, however, unaffected by the change.

married couples computed from them. Accordingly, among the instances in which I have found data for verification of the estimated number of married couples in a state, the maximum error has been, not .5 per cent. as stated, but 5.5 per cent., and when the same ratio is subsequently applied to New York city, the error rises to 9.9 per cent. Mr. Wright's tables, then, are not to be rejected, for nothing better can be substituted, but neither are they to be accepted without reserve. They are practically a comparison of divorces with population, thrown into the other form for convenience of statement and of comparison with foreign statistics.

In comparing divorces with married couples, the Report adopts the method of stating the number of couples to one divorce. This is like forming mortality tables from figures representing the number living to one death. The alternative method will be followed in this paper, and tables constructed by estimating the number of divorces to every 100,000 couples; the main advantage being that in such tables the numbers increase with the divorces, while by Mr. Wright's method the numbers decrease as divorces increase.

It has already been observed (§ 7) that the annual number of divorces fluctuates widely; and what is true of the country as a whole is more emphatically true of each individual state and territory. Hence, the figures for a single year offer too narrow a basis for accurate tables, and the only alternative is to take a mean of the numbers for consecutive years. This method will be adopted, and the number of divorces in 1870 uniformly computed by averaging the number for the seven years 1867-1873, and similarly the number for 1880 will be found from the seven years 1877-1883. The treatment of Delaware in the Report is a glaring example of the error that may result from a neglect of this precaution. About 80 per cent. of the divorces in that state are granted by the legislature,* and the legislature meets biennially in the odd years. This explains

* This information has been kindly furnished me by Mr. Wright.

why the annual numbers vary from 1 in 1870 to 21 in 1869 and 21 in 1871, and from 5 in 1880 to 36 in 1879 and 20 in 1881. By comparing the numbers in 1870 and 1880 with the estimated number of married couples, Mr. Wright concludes (p. 148) that Delaware is more free from divorce than any state except South Carolina, which has no divorce law. The broader and fairer basis of comparison here adopted, relegates Delaware to the seventh place in 1870, and the fourth in 1880. (§ 20).

As our attention is confined for the present to the country as a whole, the increase of divorce relative to married couples may be stated in a single sentence. In 1870 there were 155 divorces to 100,000 couples; in 1880, 203. This indicates the degree in which the divorces are gaining on the population; but in so abstract a form the full significance of the figures is not evident. The following section will make their meaning clear.

§ 9. *Increase with reference to its Possible Outcome.*

The increase of divorce in this country has at length attracted attention and study. Its progress for the past twenty years has been marked out. During that time the current has been rising steadily and rapidly. But families living on a river's edge in spring are most anxious to know whether the stream is rising one inch an hour, or two, or six. It is their only means for determining how long a time will elapse before the torrent, unless its rise be stayed, shall sweep away their homes. Similarly the real importance of the increase of divorce lies in the indication it affords of the lapse of time before its rise will seriously threaten the stability of the particular homes in which each one is most interested.

As marriages may end by two means, death and divorce, the simplest method of estimating the future growth of the latter is by comparing the divorces with the total terminations of marriage. Mr. Wright states (p. 185) that the average duration of married life in the United States, until ended by death, may be assumed to be about twenty-four years. Then the

annual number of terminations of marriage by death may be considered one twenty-fourth of the number of couples. On this basis it is found that of the total of 314,350 terminations of marriage in this country in 1870, 96½ per cent. were by death and 3½ per cent. by divorce. In 1880 the percentage of divorces was 4.8, and in 1890 probably about 6.2. On the assumption that the conditions of the past twenty years remain unchanged, and the population continues to increase through the next century at the rate of 28 per cent. a decade, and divorces at the rate of 69.2 per cent., the latter will constitute a rapidly increasing percentage of the total terminations of marriage, as follows: 1900, 8 per cent.; 1910, 10.4 per cent.; 1920, 13.3 per cent.; 1930, 16.8 per cent.; 1940, 21 per cent.; 1950, 26.1 per cent.; 1960, 31.8 per cent.; 1970, 38.2 per cent.; 1980, 44.9 per cent.; 1990, 52.1 per cent.; 2000, 58.8 per cent. At the end of one hundred years of increase like the last twenty, more marriages would end by divorce than by death. It is obvious that this would involve a fundamental alteration in the nature of the institution. It may be urged that the conditions will not be constant, that in fact they are rapidly altering, and it must be admitted that the population will not continue to increase at the rate of 28 per cent. in each decade. But thus far the progress of divorce has suffered no check. On the contrary its rate has slightly accelerated. The second quinquennial increased over the first 27.9 per cent.; the third over the second 30.3 per cent.; the fourth over the third 31.4 per cent.

It is not claimed that such a computation has much value as determining the future. The elements are too varying and ill-determined to give good basis for a prediction. Those theoretical considerations, stated in §§ 35, 36, must modify the results here stated, and that to an unknown degree. Such a calculation, however, has its importance as magnifying some ten diameters the past increase and making the meaning of its rate more obvious.

§ 10. *Increase among the Negroes.*

The court records in the southern states seldom indicate the color of the parties to a suit and, therefore, no direct statistical evidence on the subject of negro divorces is accessible. Some study of the subject having led me to the belief that the increase among the negroes has been abnormally rapid, the following method of testing the hypothesis was adopted. It is essentially a comparison of the black with the white counties in the same state. If the increase among the negroes has been excessive, the counties containing a large percentage of that race would probably show on the whole an unusual increase of divorce. The counties of seven fairly typical southern states have been grouped in classes; the first including all counties with 1 to 7 per cent. negroes, the second all with 7 to 17 per cent., the third all with 17 to 35 per cent., the fourth all with 35 to 60 per cent. and the fifth all with over 60 per cent. This grouping is based on the maps in the census of 1880. The divorce rate relative to married couples has then been determined for each group for 1870 and 1880, and the percentage of increase ascertained. The final result is given in the following table. The figures preceded by a minus sign indicate the percentage of decrease for the decade, the other figures give the percentage of increase. In several instances the first number against each state is based on so small a number of counties as to be less trustworthy than the others. When weighing the meaning of the table, it should be remembered that the average decennial increase for the whole country was 69.2 per cent.

TABLE II.
Comparison of Decennial Increase in White and Black Counties.

States.	Counties with 1-7 per cent. negroes.	Counties with 7-17 per cent. negroes.	Counties with 17-35 per cent. negroes.	Counties with 35-60 per cent. negroes.	Counties with 60-100 per cent. negroes.
Virginia	-11	44	81	104	100
North Carolina.	28	27	78	114	146
Georgia	-34	10	30	16	43
Florida	10	34	104	88	164
Alabama	17	170	118	298
Mississippi.....	..	162	52	80	174
Arkansas.....	52	21	23	90	142

In all these states but Georgia the counties containing over 35 per cent. of negroes show an increase greater, and in most instances much greater, than the average for the whole country. On the other hand, in all the states but Mississippi (and there the first figure is untrustworthy because based on only 4 counties, with a total population of about 30,000), the counties with less than 17 per cent. negroes show an increase less than the average for the country. The increase of divorce, be it remembered, is totally different from its absolute amount. We shall have to examine later the question whether the negroes as a race are more addicted to divorce than southern whites.

§ 11. *Increase in the Several States.*

The method employed in the last section for determining the increase among the negroes is here applied to the states. The number of divorces to 100,000 couples has been calculated for each state in 1870 and 1880,* and the percentage of increase for the decade ascertained.

TABLE III.
Decennial Increase in the Several States.

<i>per cent.</i>		<i>per cent.</i>		<i>per cent.</i>
Connecticut.....—26	Wyoming.....	20	Tennessee.....	52
Washington.....—16	Massachusetts.....	21	Montana.....	53
Idaho.....—10	Maine.....	22	New Hampshire.....	57
Kansas.....—9	Ohio.....	27	California.....	59
New York.....—6	Kentucky.....	27	South Carolina.....	67
Nevada.....—1	Illinois.....	30	Virginia.....	73
Vermont.....0	Minnesota.....	30	North Carolina.....	100
Rhode Island.....1	United States.....	31	Colorado.....	111
Delaware.....5	Georgia.....	33	Louisiana.....	115
Indiana.....6	West Virginia.....	37	Arkansas.....	121
Maryland.....7	Nebraska.....	39	Dakota.....	123
Wisconsin.....8	Missouri.....	41	Florida.....	131
Pennsylvania.....16	District of Columbia.....	44	Texas.....	139
Oregon.....17	New Jersey.....	45	Mississippi.....	142
Iowa.....20	Michigan.....	50	Alabama.....	155

These percentages do not indicate the absolute increase, which in most cases is much greater, but the gain on the population, a far different and more significant matter. All the

* Compare Table IX, § 20.

southern states containing many negroes, except the three border states of Delaware, Maryland and Kentucky, have increased more rapidly than the average. The rapidity of increase culminates in Florida and the states about the lower Mississippi:—Alabama, Mississippi, Arkansas, Louisiana and Texas. On the other hand, nearly all the states north of Mason and Dixon's line and east of the Mississippi have increased less than the country as a whole. The exceptions are New Hampshire, New Jersey and Michigan. The states west of the Mississippi are interspersed irregularly in the table. Therefore divorce is increasing most rapidly in the southwest and south, least rapidly in the northeast and north, and with irregular rapidity in the trans-Mississippi states.

The real increase in the south has been even greater than indicated by the table. The errors of the census of 1870 made the population of many southern states too small. Obviously, a divorce rate calculated upon that population would be too large; the increase over it shown by the true rate for 1880 too small.

§ 12. *Duration of Marriage before Divorce.*

In 92.7 per cent. of the cases the date of the ceremony and, accordingly, the duration of the marriage, are known. The average length of these 304,726 marriages ending in divorce is given by Mr. Wright as 9.17 years (p. 183). It does not follow, however, as might at first be supposed, that one-half of them continued that length of time before divorce—not at all! In one-half the cases the divorce came after only 6.56 years of married life, but the other half varied in length from 6 to 50 years and so raised the average to 9.17. For example, imagine a county in which nine divorces were granted, eight at the end of three years of married life, and the ninth thirty years after marriage. Obviously, the average duration of the nine would be six years, and yet it would be of greater sociological interest and significance to know that eight-ninths were granted at the end of three years. One-fourth of all the di-

voces came within three and one-half (3.42) years after marriage; one-third within about four and one-third (4.36) years; two-thirds within nine and two-thirds (9.66) years; and three-fourths within eleven and five-sixths (11.83) years.

The lapse of time between the separation of the parties and the divorce was ascertained in 45 selected counties. In half these cases it was less than 1.7 years. Assuming that the results for the whole country would agree with this, it follows that in half the instances the separation of the parties took place within 4.86 years after marriage. This confirms, more than at first sight Mr. Wright's figures seem to do, the popular opinion that estrangement and separation are most frequent in the early years of married life.

The average length of marriage before divorce varies widely in the different parts of the country. This is shown by the following table:

TABLE IV.
Average Length of Marriage before Divorce.

	<i>years.</i>		<i>years.</i>		<i>years.</i>
Arkansas.....	6.48	Montana.....	8.83	Rhode Island.	9.97
Tennessee.....	6.91	Idaho.....	8.93	Pennsylvania.....	9.98
Louisiana.....	7.57	Virginia.....	8.96	Connecticut.....	10.04
Kentucky.....	7.59	Nevada.....	8.97	Oregon.....	10.07
Mississippi.....	7.75	Colorado.....	9.03	New York.....	10.21
Missouri.....	7.78	<i>United States</i>	9.17	Dist. of Columbia.	10.29
Indiana.....	7.78	West Virginia....	9.37	Maine.....	10.29
Texas.....	8.07	Iowa.....	9.46	Delaware.....	10.40
Florida.....	8.13	Ohio.....	9.60	Dakota.....	10.54
Kansas.....	8.19	Michigan.....	9.62	New Hampshire..	10.69
Alabama.....	8.32	Wisconsin.....	9.82	Vermont.....	10.80
Wyoming.....	8.45	California.....	9.83	Minnesota.....	10.84
Nebraska.....	8.47	Washington.....	9.90	New Jersey.....	11.69
Illinois.....	8.59	North Carolina..	9.93	Massachusetts....	12.12
Georgia.....	8.67	Maryland.....	9.94		

The interval between marriage and divorce is shortest in the southern states, and longest in the northern states east of the Mississippi. It is probable that the interval in Europe is somewhat longer than the average for our whole country. Ten years of Swiss statistics indicate an average of 9.8 years,* and M. Bertillon (p. 20) says the average is about ten years.

* Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885. Beilage 1.

Differences of legislation are influential upon this element. For example, Massachusetts continued much longer than her neighbors to require that desertion should last for five years in order to become a ground of divorce. Consequently, the average interval in divorces of this class, constituting 45 per cent. of the whole number, was a full year longer in Massachusetts than in the adjacent New England states.

It is encouraging to find that the duration of marriage before divorce is increasing with considerable rapidity, both in the country as a whole and, so far as my examination has gone, in each of the states. In the first five years the average was 8.86 years; in the last five, 9.59; in the first, one-half the divorces were issued within 6.13 years after marriage; in the last, one-half within 6.83. The average has thus increased nearly nine months in fifteen years. The following table will indicate the facts more clearly:

TABLE V.

Increase of Divorces Grouped According to the Duration of Marriage.

Duration of marriage in years.	Divorces granted, 1867-71.	Divorces granted, 1882-86.	Per cent. of increase.
1.....	2899	5314	83
2.....	4019	7483	86
3.....	4974	9426	89
4.....	4746	9671	104
5.....	4068	9014	122
6.....	3388	8274	144
7.....	3005	7021	134
8.....	2516	6093	142
9.....	2133	5305	149
10.....	2051	5002	144
11.....	1778	4384	146
12.....	1539	4089	165
13.....	1398	3563	156
14.....	1189	3144	164
15.....	1134	2931	158
16.....	934	2721	191
17.....	914	2217	143
18.....	742	1877	153
19.....	694	1577	127
20.....	645	1459	126
21 and over..	4038	9401	133
Total	49,004	109,966	119

It thus appears that the average increase for the fifteen years was 119 per cent., but the increase of divorces granted within four years after marriage was considerably less than this. On the other hand, those granted more than four years after marriage show a larger increase, and the climax is reached in those granted after between twelve and eighteen years of married life. These increased between 143 and 191 per cent.

§ 13. *Remarriage after Divorce.*

Over and over in the progress of the discussion the assertion has been made that most divorces are obtained in order to open the way to a second marriage, and the conclusion has been drawn that a limitation on remarriage, or a denial of it altogether, would greatly reduce the number of divorces. A most emphatic statement of this character was made in a recent article by Hon. E. J. Phelps. He says:*

"The question is not whether divorce laws shall exist, but whether they shall permit the divorced parties to remarry. If that right were taken away, nine-tenths, perhaps ninety-nine hundredths, of the divorce cases would at once disappear. In the vast majority of instances the desire on the part of one or the other or both to remarry is the foundation of the whole proceeding."

No proof is offered of the dogmatic assertion. Mr. Phelps says it is "the result of a long observation of judicial proceedings in this class of cases;" but the observation of any single lawyer, however eminent, is so inadequate a basis for so broad a generalization, that it deserves only to be laughed out of court. His opinion, however, is shared by many excellent people and merits serious attention. No clue to an answer can be found on this side of the water. Having no good statistics of marriage, we have no statistics of remarriage. But the concurrent testimony of the statistics of Berlin, Holland and Switzerland replies to the question. Is it asked: How shall it be investigated by the statistical method? The thing is very simple. Marriages end by death or divorce. Now, it is

* *Forum*, Dec., 1889, p. 352.

presumable that the death of a husband or wife does not occur, in any appreciable number of cases, as a result of the surviving partner's desire to marry again. Therefore, the interval between the death of a husband or wife and the remarriage of a widow or widower may be considered the normal interval, and any diminution of this would register the influence on divorce exerted by a present desire of remarriage. The point has been examined in detail by M. Bertillon in an article, "*Du sort des divorcés*," originally published in June, 1884, in the *Journal de la Société de Statistique de Paris*, and translated the same year for the Journal of the Statistical Society of London. As the article in either form is somewhat inaccessible, one table is here reproduced. That of Switzerland is selected, because the conditions and divorce rate of that country correspond most closely to our own.

TABLE VI.

Remarriage of Divorced Persons in Switzerland.

Time between end of first and beginning of second marriage.	Of 1000 widowers remarrying within ten years, number remarrying each year.	Of 1000 such divorced men, number remarrying each year.	Of 1000 such widows, number remarrying each year.	Of 1000 such divorced women, number remarrying each year.
Less than 1 year	323	300	95	194
1 year	260	255	264	282
2 years	136	151	152	166
3 years	82	106	132	127
4 years	48	53	91	68
5-9 years	108	101	196	125
10 years	43	34	70	38
Total.....	1000	1000	1000	1000

Could it be proved more conclusively that divorced men and women are not more disposed to marry directly after the decree than widows and widowers are to marry after the death of husband or wife.

Another series of tables has been compiled by the same

statistician, comparing the tendency to marry shown by bachelors, widowers and divorced men, and by spinsters, widows and divorced women. Until the age of 35, he finds, divorced men and women marry less often proportionately than widowers and widows, but after that age they show a greater tendency to marry. For a detailed proof of this position, the reader is referred to the article already cited.

§ 14. *Distribution of Divorce between Natives and Foreign Born.*

The censuses of Massachusetts and New York divide the residents of those states into the three classes of single, married and divorced, and subdivide them into natives and foreign born. Obviously, divorced persons who have remarried would be included in the second class; many others would return themselves as single in preference to divorced. Therefore, these data are very untrustworthy; but, on the other hand, the figures in the two states agree in indicating the ratio of divorced natives to married natives to be about four times that of the divorced foreign born to the married foreign born. In the absence of other and more accurate data, these may be used to give a rough approximation. The New York census indicates also the marriage rate of the foreign born. Sixty per cent. are married, 52 per cent. to a foreign born husband or wife, 8 per cent. to a native. In default of further information this must also be extended to the whole country. On that assumption the 6,679,943 foreign born residents of the United States in 1880, would be married as follows: 3,473,570 among themselves and 534,395 to natives, while the remaining 2,671,978 would be unmarried. When compared with Mr. Wright's estimate of the total number of couples in the country, this gives 7,193,728 native couples, 534,395 mixed couples and 1,736,785 foreign born couples. It must be assumed that marriages of mixed couples are as likely to be broken by divorce as those of native couples. The probability is that they are somewhat more so, but no measure of the excess is obtainable. Then the 19,228 divorces of 1880 would be distributed as fol-

lows: 1,023 to foreign born, 1,259 to mixed and 16,945 to native couples. While the ratio of divorces to 100,000 couples for the whole country was 203, that ratio for the native couples alone was 236.

§ 15. *Distribution between Catholics and non-Catholics.*

Our Catholic population is an element of the problem about which even less is statistically determined than about the foreign born residents. Even the number of Catholics in the country has never been given in any national census, and, therefore, it is necessary to accept the figures of the Catholic Directory, 6,832,954. Because of the lack of information, the important and complicating element of mixed marriages must be disregarded; and the assumption made that there were in this country in 1880 about 1,291,428 Catholic couples, and 8,173,480 non-Catholic (we can hardly say in all cases Protestant) couples. The carefully collected statistics of Switzerland show 73 divorces a year to every 100,000 Catholic couples, 283 a year to every 100,000 Protestant couples and 605 a year to every 100,000 couples of mixed religion (Bertillon, p. 32). In default of statistics for our own country, nothing better can be done than to apply these ratios and assume that in this country also divorce is four times as frequent among Protestants as Catholics. The rough approximation thus obtained is as follows: in 1880 there were 18,497 divorces among the 8,173,480 non-Catholic couples, and only 731 among the 1,291,428 Catholic couples. It is probable that the real difference was even greater than this, because the difference of religion would be accentuated in many cases by a difference of race and social position.

§ 16. *Distribution between Negroes and Whites.*

The common opinion in the southern states is that divorce there is almost confined to the negroes. Mr. Wright gives expression and qualified indorsement to this idea as follows:

"It is probably true that in nearly all the (12) states named, where the colored population is very dense, nearly, if not quite, three-fourths of the divorces granted were to colored people ; at least this is the evidence furnished the Department by clerks of courts and by others in a position to judge with fair accuracy." (p. 132.)

The states named have from 16 to 61 per cent. negroes. As already stated, the records seldom indicate the color of the parties. An *a priori* argument against this opinion may be derived from what is known of divorce in other parts of the world. It is not the poorest and most ignorant classes that frequent the divorce courts, their poverty and ignorance prevent. Among them a change of husbands and wives occurs, if it occurs at all, without appeal to the law. This general fact would apply with especial force to the negroes, because they have been trained into licentiousness by slavery. In the old days, the slave's marriage was governed by his master's whim, and the first effect of freedom would naturally be to substitute his own whim for that of an owner. Is it not strange, even inexplicable, that the negroes, three or four years after emancipation, began flocking to the courts to have their marriages legalized? Against statistics such an argument would be useless, but against the observation even of clerks of courts it is entitled to some weight. For such observation would be almost valueless except as to the present, while Mr. Wright asks us to believe that for the whole score of years three-fourths of the divorces have been granted to negroes.

Perhaps the statistics may be so turned about as to furnish indirect evidence, in place of the direct testimony they withhold. If the contention that the negroes monopolize the divorces be true, wherever the former are most numerous the latter would probably abound. The states with the largest percentage of negroes would have the greatest amount of divorce. But there is no relation between these two phenomena. Here are the twelve states mentioned by Mr. Wright, arranged in the order of their percentage of negro population, and against each is placed its rate of divorce as explained in § 20.

	Per cent. Divorce of Negroes.	rate.		Per cent. Divorce of Negroes.	rate.
South Carolina	61	5	Virginia	42	58
Mississippi	58	157	North Carolina	38	30
Louisiana	51	75	Arkansas	26	270
Alabama	48	143	Tennessee	26	191
Florida	47	287	Texas	25	263
Georgia	47	77	Kentucky	16	188

Were any conclusions at all to be drawn from this, it would be that those states, like Arkansas, Tennessee, Texas and Kentucky, with fewest negroes, have most divorces.

But it is objected, no conclusion of any kind can be drawn. The number of divorces is controlled by the legislation of each state, and of course South Carolina heads the list. It will be shown in the second part of the discussion that the objection is true only in part. For the present, however, its cogency may be admitted, and the argument restated in such form as to avoid the difficulty. Since no differences of legislation exist between different counties of the same state, a comparison between counties is not open to this objection. In seven states the counties have been grouped as already explained in § 10, and the annual number of divorces to 100,000 couples computed for each group for both decades. The results are stated in the following table :

TABLE VII.
Divorce in White and Black Counties.

States.	Counties with 1-7 per cent. negroes.	Counties with 7-17 per cent. negroes.	Counties with 17-35 per cent. negroes.	Counties with 35-60 per cent. negroes.	Counties with over 60 per cent. negroes.
<i>First Decade, 1867-76.</i>					
Virginia	149	68	36	27	24
North Carolina . . .	67	33	18	14	13
Georgia	156	92	74	79	44
Florida	338	208	168	191	114
Alabama	104	77	73	45
Mississippi	41	116	58	35
Arkansas	151	111	231	202	186
<i>Second Decade, 1877-86.</i>					
Virginia	132	98	65	55	48
North Carolina . . .	86	42	32	30	32
Georgia	103	101	96	92	61
Florida	371	379	342	360	301
Alabama	122	208	159	179
Mississippi	108	177	104	94
Arkansas	231	135	282	384	451

From the differences between these two sets of figures the percentage of increase in the white and black counties already given as Table II (§ 10) was calculated. The present table indicates that in all the states but Arkansas the divorce rate was less in the black counties than in the white. It may be inferred with reasonable confidence that the negroes do not obtain divorces with so much greater frequency than the whites as is commonly supposed.

It may be objected, the social and economic conditions of the diverse counties vary so widely that the result is entirely untrustworthy. The answer is, that where so many counties are included in each group (in most cases from 15 to 40 with a population of several hundred thousand), the other differences are in large measure eliminated; and no reasonable cause for the uniformity of result can be found, unless it be the uniform variation of the single element that does vary uniformly, namely, the percentage of negroes. The only instance in which the negro element is almost entirely absent is found in two small counties of Florida, Polk and Manatee, each with about 4 per cent. of colored citizens. They have about 1,160 white couples and 51 negro couples, and are charged with 53 divorces for the twenty years. Very few of these can have gone to the blacks, and yet the rate for the two counties, 267, is almost identical with the average rate in Florida, 287.

On the whole, it seems probable that the average negro rate is rather below that of the southern whites, but is increasing much more rapidly than the other, and in a few localities or states may have already reached or passed it.

§ 17. *Distribution Between City and Country.*

Mr. Wright proves that divorce is more common in cities than in the country, but the method he was compelled to follow is so rude that it fails to fix the amount of difference. In fact, many rural counties have a rate as high as, or higher than, that of the largest city of the state. For example, Berkshire and Hampden counties, Massachusetts, have a rate

considerably above that of Suffolk; and four other counties in that state have a rate practically identical with the Boston one. Now the European statistics prove conclusively that the city rate is from three to five times that of the surrounding country (Bertillon, page 55). To reconcile the discrepancy between these figures and ours, it must be assumed that some counterbalancing influences are at work here. Our foreign born and Catholic population have a divorce rate about one-fourth that of the rest of the country, and they are so massed in the cities as appreciably to affect the city rate. The theory that their presence masks the true influence of city life derives support from the figures of the state censuses; but those data are too inaccurate to be cited in detail.

§ 18. *Distribution between Couples with Children and those without Children.*

It is probable that the presence of children in a family diminishes the tendency to divorce. Can statistics test this theory and give any measure of the influence thus exerted? If the number of childless couples, the number with children and also the number of divorces in each class, were known, then the tendency to divorce in each might be calculated, and the difference, if any, be found. A rough approximation to an answer may be obtained by combining some figures in the Report with others in the Massachusetts census of 1885. That state is, perhaps, the only one to report the number of childless wives and wives with children. The former are 17.56 per cent. of the whole number of married women. There is only one state, New Jersey, in which the court records indicate with fair completeness whether the parties divorced had or had not children. In that state the number reported as unknown was only 2.6 per cent. Three other states, Minnesota, Maryland and Colorado, report as unknown, respectively, 8 per cent., 14 per cent., 14 per cent. All the rest have records so incomplete as to be worthless for our purpose. By a combination of these figures with the estimated number of couples

for 1875 and the Massachusetts ratio of childless wives to the whole, the following results are obtained :

	Divorces annually to 100,000 cou- ples with chil- dren.	Divorces annually to 100,000 child- less couples.	Ratio.
New Jersey.....	45.8	165.5	3.6
Minnesota.....	96.9	369.8	3.8
Maryland.....	40.3	140.5	3.5
Colorado.....	260.7	1421.6	5.4

The errors involved in applying to a frontier state like Colorado a Massachusetts birth rate and an inaccurate ratio of couples to population, determined from a few eastern states, may account for the variation shown. On the whole it is fair to conclude, notwithstanding, that childless marriages are between three and four times as likely to end in divorce as marriages with children. The only foreign census cited by M. Bertillon (p. 135), as giving the same datum as that of Massachusetts, is the French census of 1856. The results obtained from that confirm the foregoing. The rate at which separations were demanded was 3.6 times as great among childless couples as among others.

§ 19. *Distribution of Divorces as granted to Husband or Wife.*

Nearly two-thirds of the divorces (65.8 per cent.) were granted on demand of the wife. The party going into court is usually somewhat more innocent than the other. Therefore the husband more often destroys the marriage tie than the wife; certainly he is more likely to commit those overt acts on which a suit for divorce must usually be based.

Law is for the protection of the weak against the strong through the superior strength of numbers, *i. e.* the community. But weakness may be beyond the effective protection of law. A modicum of knowledge and courage is necessary, or law is of no avail. Seldom can the police effectively restrain parental

abuse, and the submissiveness of negroes has foiled many an effort at interference on their behalf. In some parts of the country and some classes of society, a wife's relation to a husband is that of a child to a parent, or a servant to a master, much more than of an equal to an equal. Public opinion, her early training, dread of notoriety and the absence of all means of support apart from her husband, compel her to endure wrongs and ill-treatment to which the ear of the judge would be open. The purpose of the divorce law is foiled. Hence the number of divorces decreed is no more a test of the wrongs endured by wives, than the number of parents punished for cruelty to children is a criterion of the abuse they suffer. Divorces to wives measure their resistance, not their burdens. Southern wives are probably more resigned and submissive than northern, and, in accordance with this fact, the Report shows that they are less inclined to seek a divorce. In seven southern states, less than half the divorces are granted to the wife, and in the whole sixteen the ratio is only 55.4, while in thirty northern and western states and territories 69.2 per cent. are granted to women. If the number of divorces granted to the husband had been unchanged, 112,540, but those granted to wives had remained through the twenty years at the southern ratio, 55.4 per cent. of the whole, the total number would have been 251,776, instead of 318,716, and the number granted to northern women 95,240, instead of 172,183. The differences between the various states and territories in this regard may best be indicated by the following table:

TABLE VIII.

Percentage of Divorces to Wife in States and Territories.

North Carolina.....	39.3	New York	62.6	Massachusetts	69.5
Mississippi	40.0	New Jersey	62.9	Michigan	69.9
Alabama	42.5	Missouri	64.6	Connecticut	70.6
Virginia	43.9	New Mexico	65.1	Maine	70.7
South Carolina.....	45.4	<i>United States</i>	65.8	Indiana	71.0
Florida	45.8	New Hampshire	65.9	Washington.	71.1
West Virginia.	48.0	Pennsylvania	66.5	District of Columbia .	72.1
Georgia	51.8	Arizona	66.6	Ohio	72.2
Arkansas	52.4	Colorado	67.0	Oregon	72.5
Texas	55.4	Wisconsin	67.4	Idaho	72.6
Utah *	55.4	Nebraska	68.3	Utah *	74.1
Louisiana	56.2	Iowa	68.4	Montana	74.8
Dakota	57.2	Minnesota	68.5	California	75.3
Kentucky	58.8	Wyoming	68.8	Rhode Island	77.6
Maryland	60.4	Illinois	68.8	Nevada	77.9
Tennessee	61.2	Vermont	69.2		
Delaware	62.3	Kansas	69.3		

The average length of marriages ending in a divorce granted to the wife is somewhat greater than of those where the divorce is granted to the husband. In other words, wives show a little more patience and long-suffering than husbands. The difference, however, is but trifling, three-tenths of a year, and even this is not found all over the country. Of the eighteen states and territories west of the Mississippi, all but Missouri, Nevada, and Utah have a shorter average interval between marriage and divorce in cases where the wife is the complainant. On the other hand, of the twenty-seven states east of that river, including Louisiana, Minnesota and the District of Columbia, twenty-one show a longer duration of marriage when divorce is decreed to the wife. The six exceptions are three states in the southeast, Georgia, Florida and Alabama, two in the northwest, Michigan and Wisconsin, and one in the northeast, Rhode Island. The Mississippi, then, divides the country into two belts, an eastern, where suffering wives show a little more

* From 1875 to 1879 hundreds of divorces for non-resident eastern parties were granted in Utah (compare § 28). Most of these, fully seven-tenths, were to the husband. Hence the true position of Utah is found by neglecting the figures for those four years, and computing the percentage from the other sixteen.

patience than husbands, and a western, where the reverse is true.

§ 20. *Distribution among the Several States.*

The divorce rates of the states given in the table below have been computed as follows. The number of divorces in 1870 and 1880 was determined by averaging the figures for the seven years, 1867-73 and 1877-83; this average was divided in each case by the estimated number of married couples in the state for that year, and the decimal thus obtained was multiplied by 100,000. The result obviously expresses the number of divorces annually to 100,000 couples.

TABLE IX.

Divorce Rate of the States in 1870 and 1880.

1870.					
South Carolina	3	Minnesota	111	<i>New Hampshire</i>	280
North Carolina	15	Texas	113	California	289
<i>Louisiana</i>	26	<i>District of Columbia</i>	123	<i>Maine</i>	326
Virginia	33	<i>Florida</i>	124	<i>Indiana</i>	349
New Jersey	47	Arkansas	130	Colorado	371
<i>Alabama</i>	56	Dakota	132	Idaho	376
Delaware	57	Tennessee	133	Montana	448
Georgia	58	<i>Massachusetts</i>	133	<i>Connecticut</i>	453
Maryland	60	Kentucky	148	Oregon	460
<i>Mississippi</i>	65	Missouri	153	<i>Rhode Island</i>	470
New York	86	<i>United States</i>	155	Washington	525
West Virginia	95	Nebraska	169	Wyoming	528
Pennsylvania	96	Ohio	196	Nevada	611
		Wisconsin	202		
		Michigan	253		
		Kansas	257		
		<i>Vermont</i>	263		
		Iowa	264		
		Illinois	274		

1880.

South Carolina	5	Alabama	143	<i>Maine</i>	399
North Carolina	30	Minnesota	145	Idaho	433
Virginia	58	Mississippi	157	<i>New Hampshire</i>	439
Delaware	60	<i>Massachusetts</i>	161	Washington	441
Maryland	64	<i>Dist. of Columbia</i>	177	California	459
New Jersey	68	Kentucky	188	<i>Rhode Island</i>	476
<i>Louisiana</i>	75	Tennessee	191	Oregon	538
Georgia	77	<i>United States</i>	203	Nevada	606
New York	81	Missouri	216	Wyoming	633
Pennsylvania	111	Wisconsin	218	Montana	685
West Virginia	130	Kansas	235	Colorado	781
		Nebraska	235		
		Ohio	249		
		<i>Vermont</i>	260		
		Texas	263		
		Arkansas	270		
		<i>Florida</i>	287		
		Dakota	294		
		Iowa	316		
		<i>Connecticut</i>	333		
		Illinois	357		
		Indiana	369		
		Michigan	379		

The returns from Louisiana and Idaho are incomplete. No report was received from counties containing about one-fourth the population of the former and one-fifth that of the latter. In the table for 1880 a correction has been made by assuming that the rate in these counties was the same as the average for the rest of the state.

The breaking up of each table into three irregular columns has a purpose. It aims to attract attention to a most suggestive conclusion indicated by the table. Divorce is distributed over the country along geographical lines. The division is not made by parallels of latitude into north and south. The lines of cleavage in this case are the two great mountain systems of the country dividing the states into Atlantic, Pacific and central. Divorce is most common on the Pacific, least common on the Atlantic. Study the table a moment, and note how remarkable a division it is. Observe that the first column includes the seventeen Atlantic states, except Florida and the six in New England; the second, the eighteen central states, except Louisiana; the third, the eight Rocky Mountain and

Pacific coast states. The great exception is found in the six states of New England. They show more divorce than would be expected from their geographical position. Compare the two tables, however, and it will be seen that every one of them but New Hampshire has ascended in the scale and drawn nearer the first group, to which it naturally belongs. However, it must be admitted that they constitute an exception to the general division, which must find a deeper explanation in the characteristics of New England blood. Look for a moment at the other deviations from the rule.

The Catholic influence may contribute to explain the freedom from divorce in Louisiana. The District of Columbia is really a city, about 83 per cent. of its population is urban, and it only confirms the general theory of the influence of urban life to find the divorce rate in the District nearly three times that of the adjacent states, Maryland and Virginia. Hence this exception is merely apparent. The Rhode Island rate, higher than that of any other state east of the Rocky Mountains, may find a partial explanation in a similar fact. That state has a proportion of urban population (77 per cent.) larger than any other.

Since the war there has been a large migration to Florida from the north, which may have exerted an influence on the divorce rate there. A slight statistical indication that this conjecture is correct may be found by comparing the place of marriage of the divorced parties in Georgia, Florida and Alabama. Fifteen per cent. of the Florida divorces were granted to parties married elsewhere; only 5 per cent. were granted to such parties in Georgia and Alabama, and nearly all of these latter came from adjacent states, only about 1 per cent. coming from a greater distance. In Florida, on the contrary, about 11 per cent. were granted to parties married either in a non-adjacent state or in a foreign country.

Neglecting the nine exceptions italicized in the table, the Atlantic coast state with highest divorce rate has less than the

central state with least, and the central state with most has less than the western state with least. The division is so regular and clear that the question at once arises, what is the cause? Is any explanation to be found in the different systems of legislation in vogue in the three belts? The query is but a phase of the larger problem: What is the influence of legislation on divorce? In this form it will constitute the subject of the second part.

PART II.

INFLUENCE OF LEGISLATION ON DIVORCE.

§ 21. *Problem and Method.*

Law and other causes influence the divorce rate. Thus much is axiomatic. But when an attempt is made to go further and determine the relative influence and effect of law and the sum of other causes, then the controversy opens. One party claims that law is a minor and relatively unimportant factor; another, that it is the controlling element. Between these two views a decision must be made. That is the problem. How is it to be solved? In two ways. First, select states or countries with similar social and economic conditions, but very different laws, and compare their divorce rate; do the same for states with similar laws, but different economic conditions; note whether the divorce rate varies with the law, or with the other factors, or with neither exclusively. Secondly, examine every instance of a change in the divorce law, and observe whether it was attended by a change in the figures such as might have been produced by the law. To prove the point there must be a uniform conjunction of such changes, and it is constantly to be remembered that negative cases are far more weighty than positive. For the latter may be easily explained as mere coincidences, unless uniformity of occurrence makes any such explanation impossible.

§ 22. *Legal Causes of Divorce.*

The forms of legal procedure in divorce cases are an uninviting subject of study. A large measure of uniformity in substance underlies the differences in the various states, and

there is no evidence to prove that the superficial variations have exerted a marked influence on the divorce rate. Consequently they will here be neglected. But with reference to the legal grounds of divorce, the matter stands otherwise. The number of these differs widely in the various states. Does the divorce rate show corresponding variations?

As a preliminary step, the grounds must be analyzed and grouped. Like the forms of procedure, they manifest superficial variations covering fundamental uniformity. Mr. Wright has reproduced the former, and not clearly shown the latter. He enumerates forty-two grounds of absolute divorce, each in force in some part of the country, but a single elementary distinction will reduce the number materially. Divorce is the dissolution of legal marriage; if there has been no marriage, there can be no divorce. A court may declare the pretended marriage a nullity, but such an adjudication is in no proper sense divorce, although the statutes in many of the states so term it. The misuse of English by state legislatures, however, must not be permitted to obscure the difference in things, and such a designation can be retained only with a protest expressed by styling it an improper divorce. The grounds on which improper divorces are granted include such causes as certain degrees of relationship, lack of age, capacity, or consent. In not a few of the states the list of such impediments to marriage laid down by the common law has been extended by statute. Rather more than one-third of the forty-two grounds of absolute divorce enumerated by Mr. Wright are really grounds invalidating the marriage from the beginning. All these and the improper divorces granted for them, 2,854 for the twenty years, must be disregarded. The remaining causes may be grouped as general or local; each of the six former is admitted in at least twenty-five states, while each of the eight latter is confined to one or two. The number and per cent. of divorces for each cause appears in the following table:

TABLE X.

Divorces Classified by Causes.

Total Divorces.....	328,716
Cause Unknown.....	10,315
Improper Divorces.....	2,854
	<u>13,169</u>
Proper Divorces for Known Cause.....	315,547

General Causes.

		Per cent.
Desertion.....	126,676	40.15
Adultery.....	67,686	21.45
Cruelty.....	51,595	16.33
Drunkenness.....	13,866	4.40
Neglect to Provide.....	7,955	2.52
Imprisonment.....	2,721	.87
Combination of General Causes.....	<u>35,417</u>	<u>11.23</u>
Total for General Causes.....	305,916	96.97

Local Causes.

Neglect of Duty, Ohio.....	2,685	
Incompatibility of Temper, Utah.....	1,579	
Misconduct, Connecticut.....	454	
Voluntary Separation, Wisconsin.....	228	
Violent Temper, Florida.....	119	
Vagrancy, Missouri.....	50	
Supervient Insanity, Ark., Wash.....	28	
Gross Misbehavior and Wickedness, Rhode Island.....	<u>6</u>	
Total for Local Causes.....	5,149	1.60
Combinations of General and Local Causes.....	4,115	1.31
Minor Causes.....	<u>367</u>	<u>.12</u>
	315,547	100.

The local causes may be dismissed in few words. Two have been repealed in the course of the twenty years, incompatibility of temper in Utah and misconduct in Connecticut. Neglect of duty in Ohio is substantially the same as neglect to provide in other states, but apparently is construed somewhat more broadly, for husbands sue on the ground of neglect of duty, while only wives have a legal claim to be provided for. On the other hand, the Kansas statute couched in the same terms is apparently construed there as synonymous with neglect to provide, and divorces are reported for the latter rather than the former cause. It is probable that most of the

4,115 divorces for a combination of general and local causes, were really granted for the former. While Connecticut, for example, reported 1,107 divorces for desertion and misconduct together, desertion must have been the effective cause of the great majority. Therefore, about 98 per cent. of all divorces for known causes may be set to the account of the six general grounds, and to these our attention may be confined.

Each of these grounds is wide-spread, but none universally admitted, for South Carolina has no divorce law. There are forty-eight jurisdictions and systems of law in our country, exclusive of Alaska. Forty-seven allow divorce for adultery, forty-five for desertion, forty-one for cruelty, thirty-nine for imprisonment, thirty-seven for habitual drunkenness, twenty-seven (including Kansas) for neglect to provide. The question now recurs, Does the distribution of causes of divorce throw any light on the geographical division stated in § 20?

§ 23. *Comparison of Number of Causes with Divorce Rate.*

The six general causes are distributed with considerable uniformity over the central and western belts. No explanation of the different rates in these two belts can be found in any difference of causes. The only one in reference to which there is much difference, is neglect to provide. This is admitted by some and rejected by others, but no variation of rate can be shown to result, nor is the tendency to group along geographical lines thereby affected. Illinois and Iowa admit this cause, Indiana and Michigan do not, yet the former just outrank the latter. Tennessee admits it, Kentucky not, but there is only an inappreciable difference of rate. Kansas admits it, Nebraska not, yet their rates are exactly identical. Comparatively little evidence is to be found in these two groups, but what there is goes to show that the differences of law are overridden by similar social and economic conditions. For in a large and general way it must be admitted that in such respects adjacent states are more similar than far distant ones.

The eastern belt of states, from New York to Georgia, includes all which have manifested a conservative spirit in their divorce legislation. Here are found South Carolina with no divorce, North Carolina and New York with only one general cause, New Jersey and Maryland with two, Virginia and West Virginia with three. Apparently, then, these states show clearly the marked influence of legislation. But such a conclusion must not be too hastily drawn. These large and old states are very conservative and averse to radical changes of law. Their social and economic conditions have probably changed less than those of the other two groups. Certainly this is true of the southern half of the belt, where divorce is least frequent. So a closer examination is necessary. Let the states be arranged as below in the order of their freedom from divorce, and against each be placed the number of general causes for divorce allowed, and it will appear that there is no connection between the two.

States.	General causes admitted.
North Carolina	1
Virginia	3
Delaware	6
Maryland	2
New Jersey	2
Louisiana	5
Georgia	5
New York	1
Pennsylvania	4
West Virginia	3

New York, New Jersey and Pennsylvania, may be compared more closely. The New York rate is greater than New Jersey's, and only just above Pennsylvania's. This means that more divorces for adultery are granted in New York, relatively to population, than for adultery and desertion in New Jersey, and almost as many as for adultery, desertion, cruelty and imprisonment in Pennsylvania. Assume the number of married couples in the three states in 1875 to be a mean between the

estimates for 1870 and 1880, and compare with this mean the total number of divorces for adultery in the three states for the twenty years. Pennsylvania had annually 158 such divorces to 100,000 couples, New Jersey had 256, and New York, 781. Judging from the court records one would say that adultery was about three times as frequent in New York as in New Jersey, and about five times as frequent as in Pennsylvania. No such inference is warranted. The true conclusion is that limiting the causes, increases the number of divorces in those which remain, but without materially affecting the total number. A certain proportion of the married couples in the three states desired divorce and were willing to offer the evidence required in order to obtain the decree. The number of causes, then, seems to have affected the distribution of divorces, but in no large degree the total number.

The law of Delaware is different from that of any other state. Here alone has survived the English custom prior to 1858 of granting divorces by Act of Parliament. In most of the states and territories such private bills are forbidden, and in those where it has not been prohibited the custom has fallen into disuse. But in Delaware about 80 per cent. of the divorces are granted by the legislature, and hence in theory may be for any cause. The largest percentage of cases reported as for cause unknown comes from this state. The custom appears to be lax. Moreover, in addition to this apparent looseness, the Delaware courts are empowered to grant divorces for any one of the six general causes. Even neglect to provide there is recognized as a ground, although not admitted in any other state of the eastern belt. We should expect accordingly to find divorce frequent in Delaware. But the opposite is true. The state ranks above its immediate neighbors, Maryland and New Jersey, and but very slightly below Virginia, while it has only about half the rate of Pennsylvania. On comparing the number of divorces for adultery in Delaware with that for the neighboring states, we find New

Jersey has 256, Maryland, 253, but Delaware, only 109 to 100,000 couples. The reduction of the number of causes from six to two seems to have had little influence on the total divorce rate, but to have made those granted for adultery about two and one-half times as numerous.

The low rate of North Carolina appears at first glance connected with her one ground of divorce as effect with cause, yet even here the relation is doubtful. It may well be that she shares in the sentiment of her sister state to the south, that her public opinion likewise vigorously opposes divorce in any case, and that her rate is controlled by this opinion much more than by law.

The three belts of states do not in any way conform to the differences in the legal grounds of divorce. Such differences are uniformly overridden. The clear tendency of states in geographical proximity to stand in juxtaposition in the table is equally unexplained by any similarity in their divorce law. Therefore law must be a relatively unimportant factor in the complete explanation of the variations of divorce rate in the states.

§ 24. *Changes of Law in the Last Score of Years.*

The second method of examining statistically the influence of law on divorce is by a comparison of every change in divorce law with the figures. If a corresponding change uniformly appears, it may fairly be regarded as a direct effect. The examination must clearly be limited to the legal changes in the twenty years for which statistics are given. Mr. Wright discusses the question at some length, and is disposed to believe that the direct influence of changes of law on the figures may be traced. "It seems quite apparent," he says (p. 150), "that the lines of statistics are curved in accordance with laws enacted just prior to the curves," and he enumerates fourteen cases of synchronous changes of law and figures, in which the former "may account" for the latter. These are not the only changes of law, be it observed, for he alludes to others which

presumably were not attended by a change of figures. He gives no clue to their number; but the importance of these negative cases is quite as great as that of the positive, and their existence must be regarded in balancing the evidence. The figures change so constantly and greatly, that an occasional coincidence of new law and corresponding change of statistics would be almost inevitable.

A fundamental oversight is made in this part of Mr. Wright's discussion. A change of the law is found to coincide with a change in the total of divorces for the state, and the two are forthwith connected, regardless of the fact that very few changes of law can have affected all causes of divorce equally. To establish a connection between the two as even probable, the change in the number of divorces must be shown to occur solely or mainly in the classes affected by the law. A statute making habitual drunkenness a ground of divorce may be attended by an increase in the total, but the two facts are not proved to stand in relation, until the increase is shown to be solely or largely in divorces granted for drunkenness. A law shortening the requisite period of desertion cannot have increased the divorces for adultery, nor can a law making cruelty a cause have increased the divorces for desertion. Equipped with this simple touchstone, let us examine the fourteen cases given in the Report as instances and proofs of a change of law causing a change in the figures. They may be grouped as follows: two introductions of new causes, South Carolina and Alabama; two repeals of causes, South Carolina and Connecticut; five modifications of causes or procedure, Dakota, West Virginia, Massachusetts, and two in Vermont; five more complex changes, Maine, Indiana, Mississippi, Colorado and Utah.

§ 25. *Changes introducing Causes.*

South Carolina passed a law in 1872 allowing its courts to grant divorces. From the fact that 98 per cent. of those granted involve either adultery or desertion, we infer that these were the grounds admitted. The figures show noth-

ing like a rush to her courts for relief. They increased slowly and irregularly for seven years, and at the end of the period had risen only to 39, while the annual average was 25.

Alabama introduced habitual drunkenness as a ground of divorce in 1870. Another law of uncertain significance, passed the same year, was repealed in 1873 and Mr. Wright thinks the two "would perhaps account for the increase of divorce from 1870 to 1873." That increase was 29; the increase of divorces for drunkenness was 1. No divorces for this cause were reported in 1870, and 1 in 1873. If all the cases in any way involving drunkenness as contributing cause be included, the argument is not materially strengthened. Such cases show an increase of 3, from 2 to 5. Nor are the two years exceptional. The figures for a decade only confirm the conclusion. They are given below, the vertical line marking the change of law:

	'67	'68	'69	'70		'71	'72	'73	'74	'75	'76
Drunkenness alone.....	0	0	0	0		0	2	1	1	1	1
Drunkenness and other causes.	4	3	3	2		0	6	5	3	2	5

The total increase for the decade was 105. What influence did this law have in causing it?

§ 26. *Changes repealing Causes.*

The effect of increasing the facilities for divorce may be gradual; the effect of diminishing them must be immediate. The community may be slow in learning that the door has been opened more widely, but if it be swung shut a little, some are excluded from the start, or the effect is nil. Therefore a decrease of divorce beginning two or three years after the passage of a restrictive law cannot be set down to its agency. South Carolina illustrates the difference between the two kinds of legislation. The slow increase for seven years has been mentioned, but when divorce was prohibited in 1878 the number fell to nothing at once.

Connecticut affords the only other example of a simple re-

peal of a cause. The law in that state permitting divorce for "any such misconduct as permanently destroys the happiness of the petitioner and defeats the purposes of the marriage relation," was repealed in 1878. The repeal was approved in March, but the number of divorces for that year was the same as for the year before, 412. It might be said that the law checked the increase in Connecticut, and it is true that there had been an increase of 32 the year before, but this was exceptional, and for two years before that the decrease had been marked. Here are the figures:

'74	'75	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85	'86
531	498	380	412	412	325	346	428	401	423	344	398	420

Is any influence of the law here discernible? To be sure there is a considerable decrease, 21 per cent., a year later, but this is almost matched by the decrease of 19 per cent. in 1884, and considerably surpassed by that of 1876, 24 per cent., although in neither case was there a change of law. And the diminution comes too late to find a clear explanation in the legal change.

The transfer of divorces for misconduct into other categories may be set forth as follows:

	1877	1878	1879	1880	1881	1882
Divorces involving misconduct..	242	143	25	3	1	0
All others.....	170	269	300	343	427	401
	412	412	325	346	428	401

The law immediately diminished the divorces for misconduct with or without other causes by 99, but there are just 99 more for other causes. It cannot be admitted that "the decrease is sufficient to show the influence" of the change of law.

§ 27. *Modification of Causes or Procedure.*

Dakota in 1881 reduced the time necessary as basis for a complaint for desertion from two years to one, and the figures are here given:

	1878	1879	1880	1881	1882	1883	1884
Divorces involving desertion..	8	18	35	30	74	85	98
All others	9	12	37	47	49	68	74

The increase is clearly perceptible, but not very permanent. The conditions in that case changed so rapidly in these years that inferences are somewhat unsafe, but whatever weight is given to the instance should probably lie in favor of Mr. Wright's view.

West Virginia passed a law in March, 1882, requiring residence for a year previous to filing suit. Prior to that date residence at the time had been sufficient. Divorces diminished from 204 to 176. The law was evidently aimed at divorces to non-residents, and the true measure of its influence must be found in the diminution of such divorces. The only datum is the number of divorces to parties married outside the state. Those married and divorced in West Virginia probably lived there in the interim. Now the divorces to parties married in that state diminished 13 per cent., while those to persons married elsewhere diminished $13\frac{1}{2}$ per cent. Mr. Wright ingeniously suggests that the increase the year previous may be accounted for by the general knowledge that such a law was under discussion, so that cases were hurried through to take advantage of the laxer provision. This is sufficiently answered by noting that the divorces of parties married in West Virginia increased 104 per cent. that year, while those of parties married elsewhere increased 69 per cent. In this state, then, no influence of legislation is traceable.

Vermont made a like change in January, 1879. Divorce was refused to parties who had never lived together in that state, and restrictions were imposed upon divorce for causes arising outside. The decrease for which this legislation is assumed to account proves on analysis to be a decrease of 36 per cent. in divorces of Vermont marriages and a decrease of only 26 per cent. in those of marriages solemnized elsewhere.

A second amendment in 1884 aimed to secure the presence

of the defendant by compulsion if necessary. This was attended by a marked decrease in all the causes, but whether the relation was other than a coincidence cannot be statistically determined.

Massachusetts in 1873 reduced the time of desertion necessary to give ground for divorce from five years to three, and in 1875 raised it again. Mr. Wright says, "probably the large number in 1874 was due to" this change. The total increased from 337 in 1872 to 611 in 1874, but, unfortunately for Mr. Wright's position, the increase under the head of desertion was only 69 per cent. while in those not involving this cause the increase was 92 per cent. Again the hypothesis fails.

§ 28. *More Complex Changes.*

Maine amended its law in 1883 by forbidding the parties to marry within two years after the decree, and repealing the authority of a Justice of the Supreme Court to decree a divorce "when in the exercise of a sound discretion he deems it reasonable and proper." The change was attended by a sudden and marked decrease in all causes. A tendency to revive followed, but the rate did not reach its former proportions.

Mississippi relaxed her law in three directions in 1871. Habitual drunkenness and desertion were made grounds, and the period of desertion required was diminished one year. The results are expressed in this table:

Divorces for	1867	1868	1869	1870	1871	1872	1873	1874	1875	1876
Desertion	22	30	26	27	32	68	67	91	66	82
Drunkenness	0	1	1	0	0	1	4	3	1	4
Cruelty	1	0	2	1	2	12	15	9	20	15
Other grounds	26	28	46	57	71	79	83	73	84	71
Total	49	59	75	85	105	170	169	176	171	172
Percentage of increase		20	27	13	24	62	0	4	-3	0

The increase for the single year was marked, more than twice as great a percentage as for any previous year, but it then stopped almost entirely.

Indiana introduced several amendments in 1873. One, a repeal of the clause, "for any other cause the court deems proper," resulted in an immediate, marked and permanent decrease in the number of divorces reported as decreed "for cause unknown." When the judge was deprived of this discretionary power he became bound to refuse a petition, unless the case was brought under some statute.

The other changes fixed at two years the duration of "desertion and neglect to provide" requisite for a divorce. The suits involving these causes diminished 24 per cent., others 17 per cent.; but the former began immediately to increase more rapidly than the latter, so that in 1875 they were 5 per cent. below the number in 1872; those for all other causes were then 3 per cent. below.

Colorado has a unique law upon desertion. The general provision of the frontier states allowing divorce for desertion continued one year is supplemented there by a law allowing it on this ground when husband or wife has left the state without intention of returning. Originally this law was in favor of the wife only, but in 1881 its privileges were extended to a deserted husband. The result of such a change would naturally be to increase the divorces for desertion granted to husbands; but as a matter of fact those to wives increased more rapidly. So this change was of no perceptible effect.

Two others made at the same time introduced the cause, neglect to provide, and changed the duration of habitual drunkenness necessary; but the increase under these two heads was only 18, while the total increase was 112. Therefore, the legal changes in Colorado had little influence on the increase.

The last and most interesting case is Utah. That territory had a very lax law, but until 1875 not a large number of divorces. In that year divorce lawyers in New York, Cincinnati and Chicago began to avail themselves of the opportunity thus afforded, and to hurry eastern divorces through the Utah courts. Statements of an intention to take residence in Utah were

enough to secure jurisdiction, and affidavits of incompatibility of temper, to justify a decree. . This continued for four years, when the Utah law was amended, *bona fide* residence for a year before the commencement of proceedings required, and the incompatibility of temper clause repealed. The apparent influence of this legislation is shown in the following figures giving the annual number of divorces for nine years:

'72	'73	'74		'75	'76	'77	'78		'79	'80
100	134	149		295	709	914	298		122	115

It seems on the face of the figures that here was a reduction of about 800 divorces a year caused by the passage of the law. But was it really so? These divorces from eastern cities were sent to Utah, because that was the line of least resistance. When that channel was closed, the current may have returned to its original bed and flowed through the courts of those cities. If this hypothesis is correct, there should be during the period of numerous Utah divorces a decrease in the divorces of these eastern cities, followed by an increase when the law of that territory was amended. The following table has been constructed to test the hypothesis:

	Annual aver- age 1871-74.	Annual aver- age 1875-78.	Annual aver- age 1879-82.	Annual aver- age 1883-86.
Chicago	468	342	603	722
New York City.	217	164	239	252
Utah (divorces of persons mar- ried at a dis- tance)	31	439	31	34

Unfortunately the Cincinnati records were destroyed in 1884, but it can hardly be doubted that these figures complement each other. This becomes still clearer when it is found that the rest of Illinois and the rest of New York maintained a steady increase through these sixteen years. The corresponding averages for the rest of Illinois are 1,248, 1,333, 1,568, 1,722, and for the rest of New York, 435, 464, 604, 692. Possibly a rough measure of the number of divorces deflected from these cities may be obtained as follows. Assume the

real number of divorces to Chicago and New York parties for 1875-78 to have been a mean between the given numbers before and after, *i. e.* 536 and 228. The sum of these numbers is 258 less than the sum of the numbers in the table. Obviously about 400 divorces annually went to Utah from the East; and here are approximately 250 accounted for in these two cities, leaving about 150 for Cincinnati and other places. The efficacy of this law in reducing the total of divorces for the whole country is made doubtful as soon as the facts are scrutinized with care.

The result of the examination of the fourteen test cases selected by Mr. Wright may be briefly recapitulated. Five, Alabama, Connecticut, West Virginia, Vermont (law of 1878), and Massachusetts, are to be unconditionally rejected; five others, Mississippi, Indiana, South Carolina (law of 1872), Colorado and Utah indicate a slight, temporary, or questionable influence of legislation, two, Maine and Vermont (law of 1884), are not subject to closer determination from the figures, and in only two, Dakota and the repeal of the divorce law by South Carolina in 1878, is there clear evidence of a considerable influence on the figures. The former might be explained either as a mere coincidence or by reference to the very great increase of population in that state in that year, making a marked increase of divorce natural, and the case of Utah might be considered as throwing light on that of South Carolina. It is indeed possible that some of the 25 divorces a year, shut off in that state in 1878, appeared in adjoining states, but neither of these explanations is satisfactory. Yet after giving due weight to these exceptions it must be admitted that the influence of law, if not nil, is at least much less than commonly supposed.

§ 29. *European changes from Separation to Divorce.*

One objection may still be urged. Other states, it may be said, have not been in earnest; they have been content with make-shifts. South Carolina alone has courageously gone to the root of the matter, and her legislation has been a success.

The true inference is, follow her example, strike deep and hard, and the blow will tell. Few are bold enough to advocate a repeal of all divorce laws, but a large number urge a return to the policy of the Catholic church, refusing in all cases the right of remarriage. The postulate on which this argument rests, that people divorce in order to remarry, has already been refuted, (§ 13) but the effect of such legislation on divorce demands statement here. No American state has made the change; therefore, it is necessary to resort to European statistics. After Alsace-Lorraine was annexed to the German empire, the German divorce law was introduced in 1874. Prior to that time the French law had allowed only separation, without the privilege of remarriage. But this change of law did not result in a marked increase of suits. The figures for 1870-73 are lacking, but the following, taken mainly from Bertillon, indicate how little the regular increase from 1850 to 1886 was affected by the change in 1874.

Separations or divorces to 1000 marriages ..	1851-55	'56-'60	'61-'65	'66-'69	'70-'73	'74-'75	
	2.25	2.48	2.89	3.83	wanting	4.52	
	'76-'80	'81	'82	'83	'84	'85	'86
	6.80	10.3	11.3	12.6	12.1	13.3	11.1

Divorce has increased with considerable rapidity in Alsace-Lorraine, but so has separation elsewhere; and that increase has been especially rapid since 1871 in all parts of the Continent. The change from separation to divorce, however, did not much accelerate the increase.

The experience of France seems to prove the opposite. Divorce was introduced in 1884, and the number rose from 3000 separations *per annum* to 6000 divorces. This is a marked instance of the influence of legislation on divorce. But it is not in conflict with the views of the party which holds law to be a minor factor. Indeed, the result was predicted by Bertillon in his book published to advocate the French law. He also predicted that the divorce rate would gradually diminish until it was near the rate of separation before the law, and then

slowly increase. It is too soon to state whether this prediction also will be verified, but the reasoning on which it is based is clear. A large number of couples in France as everywhere are living in estrangement and separation. Some have formed new and illegal unions. Some have obtained a decree of separation, but as this would not legalize a second marriage, others have deemed it a superfluity. Then a divorce law is passed, and thousands who have already obtained a separation have the decree converted into a divorce; other thousands now see a reason for going to court where before none existed. After a few years this current will cease; all who have long desired a divorce will have obtained it, and only the new cases will be carried into court.

Divorce was introduced into France by the Revolution, modified by the Code Napoleon, abrogated at the Restoration. The statistics for so early in the century as 1816 are not very trustworthy, but they indicate no marked diminution of conjugal quarrels as a result of the transition from divorce to separation. On the contrary, from 1811 to 1816 there were 72 divorces to 100,000 marriages; from 1816 to 1819 there were 75 separations to 100,000 marriages.

The slight influence of legislation may be exhibited more clearly by comparing Belgium with France. The Code Napoleon was introduced into the former country early in the century, and has remained in force ever since. Divorce and separation are both admitted, and divorce by mutual consent allowed. Until the recent amendment of her law, France allowed only separation, and that not by mutual consent. The two countries are quite similar in their religion and general conditions. Yet for the decade 1872-81 to every 100,000 couples Belgium had only 24 divorces and separations combined, while France had 33 separations.* Or, if a fairer comparison be made between Belgium and the two departments of French Flanders just over the border and most similar to

* *Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885, Beilage I.*

Belgium in all respects, the result is that in each there were five legal decrees to 1000 marriages, although in France the decrees were for separation, and in Belgium for either. That is, after living for three-quarters of a century under laws as totally different as the Catholic and Protestant theories, the two regions are found to have a perfectly identical rate. Can it longer be doubted that a return to the policy of separation would not solve our problem?

§ 30. *Laws affecting the Expense of Divorce.*

The one efficient means of reducing the number of divorces by law is to make them expensive. The evidence demanded will be furnished, but the money may not. The English law illustrates this. Prior to 1858 divorces were granted only by Parliament, the House of Lords sitting as a court. The expense was enormous, probably some thousands of dollars, for two suits at law must be won by the plaintiff before a hearing was given in Parliament. The much-discussed divorce law of 1857 simply created a court to transact the business more rapidly and cheaply. The procedure was substantially the same, the causes for which divorces were granted were unaltered; and the reason that divorces have increased to some hundreds a year, when before only one or two were granted, must be found in the difference of expense. Yet even now, with only one court for England and Wales, the cost of carrying a suit through must be some hundred dollars at least, and in this may be found the fundamental reason for the small number of divorces in that country.

France has pursued the opposite policy. A law was passed in 1851 allowing those unable to pay the expense of a suit for separation, to plead without cost. It resulted in a marked increase in the number of applications.

The obvious objections to having one system of law for the rich and another for the poor, make discussion of this method of restricting divorce unnecessary.

§ 31. *The Uniform Law in Switzerland.*

Uniform laws on divorce are needed in the United States, but so are uniform laws on bills and notes and various other subjects. The divorce problem would hardly be touched by uniformity. The present differences between the states would continue to exist almost unaffected. As they were not created by law, so they cannot be abolished by law. If the reader be not already persuaded, the example of Switzerland may convince him. That country is remarkably like our own in its divorce rate, but the differences between its cantons are greater than those between our states. Formerly, each canton controlled the subjects of marriage and divorce, but in 1874 the Constitution was revised and the Federal authorities empowered to pass a national marriage and divorce law. Such a law went into effect January 1st, 1876, and a recent volume of Swiss statistics summarizes the results of ten years of the new law. The differences between the cantons have been very slightly affected thereby. The following table,* based on those results, may profitably be compared with table IX., § 20, the basis of the two being the same.

TABLE XI.

*Divorce Rate of Swiss Cantons under Uniform National Law for
Decade 1876-1885.*

Unterwalden o. d. W..	9	Zug	83	St. Gall	245
Uri	10	Grisons	115	Thurgau	326
Valais	15	Basel, country	159	Geneva	336
Ticino	22	Aargau	162	Schaffhausen	336
Unterwalden n. d. W..	24	Solothurn	168	Glarus	339
Schwyz	42	Vaud	180	Zurich	379
Lucerne	62	Basel, city	193	Appenzell, Outer	
Freiburg	66	Neuchâtel	198	Rhodes	440
Appenzell, Inner		Switzerland	208		
Rhodes	71	Berne	223		

After ten years of a uniform law, Appenzell, Outer Rhodes, has forty-nine times as much divorce as Unterwalden o. d. W., while with all the divergences of law in this country the differences of rate are much less.

* Compiled from *Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885*. Beilage I.

§ 32. *Legal Restrictions upon Marriage.*

Certain students of the divorce problem have advocated restrictions by law upon early or improvident marriage. For example, Prof. Robinson, of Yale University Law School, says: * "No person should be marriageable under the age of 21, and a marriage ceremony celebrated between persons either of whom is under age should be *ipso facto* void."

Four thousand eight hundred and fifty-five married persons under the age of twenty were living in Massachusetts in 1885. To these must be added a large and indeterminate number of married persons between twenty and twenty-one, in order to ascertain the number of marriages which would be declared void by such a law as is proposed. How large a proportion of these nearly ten thousand people (for in the great majority of instances only one of the two is under twenty-one), would have remained virtuous and continent in the face of a law forbidding marriage? Each reader must judge for himself, but the experience of Bavaria may aid him in forming a conclusion.

In that country the local authorities were empowered to refuse marriage to such as could not give reasonable evidence of ability to support a family, in short to paupers. The number of marriages decreased rapidly, but parallel with this decrease went a large increase in the number of illegitimate births, until they reached a total of nearly one-fourth the births in the kingdom. Disturbed by this result, the legislature changed the law in 1861, and at last entirely repealed it. The annual number of marriages leaped at once from 38,000 to 59,000, and remained abnormally high for several years, thus proving the number of persons who were glad to marry when the law allowed. Simultaneously with this came a marked decrease in the number of illegitimate births. Similar results have been obtained elsewhere. Therefore legal restrictions upon marriage cannot be deemed a satisfactory method of checking divorce.

* The Diagnostics of Divorce, Journal of Social Science (Am. Ass.), xiv. (1881), p. 136.

§ 33. *Summary of Results.*

The proposed modes of reducing divorce by law may be grouped as restrictions on marriage, restrictions on divorce, restrictions on remarriage.

Restrictions on marriage reduce the number of marriages, and thus ultimately the number of divorces. By excluding the poorest or lowest classes they may do this, not only in comparison with the population, but even in comparison with the married couples. The attendant evils are so great nevertheless, as to make such restrictions unwise.

Restrictions on remarriage would probably not reduce the number of divorces. The statistical evidence obtainable indicates that divorces are not sought in order to remarry. All the objections to restrictions on marriage weigh with equal force against restrictions of this class. Furthermore, countries which have similar conditions but different laws on remarriage, present rates of divorce or separation practically identical.

Restrictions on divorce exert a minor influence on the rate. The three belts are not explained by differences of law; similarity of conditions and sentiment rides roughshod over diversities of statute in our own adjacent states, while in Switzerland diversities of condition hide any effects of a uniform law. The single efficient means of reducing divorce by law, neglecting as unadvisable and impracticable the South Carolina method, is to make it expensive. This is open to all the objections against restrictions on marriage. It makes one law for the rich and another for the poor.

The conclusion of the whole matter is that law can do little. Agitation for a change of law may educate public opinion. It may even be the most efficient and powerful means of education. Such effects no statistics can measure, and therefore in a paper like this the educative influences of law must be neglected, but the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost imperceptible.

PART III.

CAUSES AND REMEDY.

§ 34. *Basis and Character of Conclusions.*

In so complex a social phenomenon as this, the line of statistical demonstration is short, and its limit soon reached. While following it, however, opinions may gradually develop, which statistics can neither justify nor gainsay, and a few, struck out in the course of the present study, will be appended here. Some are hardly more than hypotheses to be verified, modified or retracted on further study; others, perhaps, may rank as probabilities; but all alike are offered merely as suggestions.

§ 35. *Two Conceptions of Marriage Law.*

A fundamental antithesis underlies the marriage laws of the Christian world. How far the antithesis is really one of race between Teuton and Celt, it would be hard to decide. Ordinarily it is treated as one of religion between Catholic and Protestant.

The Catholic theory is that marriage law should recognize, embody and hold fast to, a moral or religious ideal, unmodified by consideration of the needs and moral condition of the community to which the law applies. This may be termed the idealistic theory.

The realistic theory of Protestantism lays more stress on the moral standards of the community, and finds greater difficulty in solving the divorce problem with a simple, "Thus saith the Lord."

The different conceptions of marriage law may be illustrated by the different treatment of celibacy in southern and northern

Europe. Celibacy may be a moral duty for certain natures. In that belief the Catholic Church has attempted to enforce the fulfillment of vows of continence with legal pains and penalties. Protestantism admits that celibacy may be sometimes a duty, but insists that the attempt to enforce it by law is not beneficial or wise. Only at times of special enthusiasm can the sexual instinct be permanently repressed. For such times the law is not necessary, and during the intervals it is injurious.

Similarly, the moral or religious ideal of marriage is a life-long union between man and wife. Yet, as a matter of fact, that union does terminate and all relations between the parties cease. Whether the law shall recognize this *de facto* termination of marriage depends upon the conception of the function of law held by the community. If that function be to hold up an ideal, no falling short of the ideal can be admitted. Now the point here made is that since the Reformation the realistic view of marriage law has been constantly supplanting or modifying the idealistic. Whether this change has been attended by the lowering of the ideal of marriage, would be hard to decide; but it certainly has exerted much influence on the spread of divorce, or the legal recognition of the termination of a marriage.

§ 36. *The Popularisation of Law.*

During the Middle Ages law was a personal privilege. For centuries legal forms of procedure continued so intricate and expensive that the benefits of law accrued only to the wise or wealthy. Along with the extension of the suffrage in modern times has come an almost equal extension of legal privileges. Whole classes have been admitted to court that were formerly excluded by the efficient practical prohibitions of ignorance and poverty. The change in the position of the negro, effected by his emancipation, is but a single striking illustration of what has been going on constantly as a result, on the one hand, of laws simplifying procedure and diminishing the ex-

pense of litigation, and, on the other, of the better education of the community in matters of law. This education is conducted largely by the newspaper press of the country. Many a man would live in ignorance that such a thing as divorce existed, were it not for the conspicuous mention of trials in his morning paper. Thus the law has become a weapon of offense or defense for a very much larger part of the population than could use it even so recently as fifty years ago. In considering the rate of increase estimated from the figures, (§§ 3-11,) this must be borne carefully in mind.

Imagine society as a huge pyramid in which the position of each individual is determined by his knowledge and wealth. Imagine a horizontal plane intersecting the pyramid to represent the divorce law of the community, and all persons above the plane as possessing so much knowledge and money that divorce is to them a theoretical possibility, while to those below it is not. If the plane be motionless, the rate of increase of divorce may be found; but if it be gradually sinking towards the base of the pyramid, and making divorce a practical possibility to an increasing proportion of the whole number, this change must affect the calculation. Such a descent of the divorce plane has been in progress in this country, apparently, for the past twenty years. While it does not invalidate the previous conclusions, it does influence them, perhaps materially, and certainly renders untrustworthy any estimate for the future.

§ 37. *Laxity in Changing and Administering the Law.*

There are three parties to every divorce suit, the husband, the wife and the public. The consent of the public to a decision usually desired by both the other parties is expressed by the judge's decree, given in conformity to the law which itself expresses, with more or less accuracy, the permanent opinion of the community. If the state be small and the population scanty, its consent is easily gained. Push the subdivision of a state to its ultimate atoms, the families, and we revert to the patriarchal period when state and family

were identical. Then the will of the public and that of the head of the family coincided, and divorce required no sanction from a court. As society grew compact and better organized, the restraint of public opinion outside the family made itself felt, at first in the mere requirement of certain formalities, like a "bill of divorcement" or a prescribed formula. In new and sparsely settled communities, like those of our frontier states, there is an appreciable return towards the patriarchal condition. Public opinion is hardly formed, its restraint hardly felt; divorce becomes almost a personal and private matter. Judges, unrestrained by public sentiment, are lax in their decisions and legislatures in their enactments. The differences between the law of our Atlantic coast states and that of England, and between the law of our eastern and western belts of states, illustrate the tendency to a relaxation of law manifested in all new communities. The divorce law of Canada and Australia would probably have been changed ere this, but for the restraining influence and, in the last resort, the veto power of England.

If our common law had been under the exclusive protection of the National Congress, and not subject to modification by the states, its provisions on divorce would have changed much less; if the common law of England might have been modified by each county, the law of that country would, doubtless, be much laxer. Denmark and Switzerland have the highest divorce rate in Europe, and Switzerland, till 1876, had separate laws for each canton.

While the direct effect of a change of law is slight and ephemeral, its importance as a register of the public sentiment of the community is very great. The public sentiment of new and small communities changes much more rapidly than that of old and large ones, and, in the last resort, that sentiment determines the number of divorces.

§ 38. *Age of Marriage.*

No direct connection between the age of marriage and the

liability to divorce can be made out from the statistics. Yet it seems to be the rule that the communities in which early marriages are most common, are most free from divorce. Thus Prince Krapotkine tells us that in Russia "the peasants for the most part marry their sons at eighteen, and their daughters at sixteen," and the Russian peasantry are perhaps, with the exception of the Irish, the freest from divorce in Europe. Mr. Lecky, however, lays stress upon "the nearly universal custom of early marriages among the Irish peasantry," as explaining the remarkable chastity of that people.

§ 39. *The Emancipation of Women.*

The emancipation of women means the attainment of such legal recognition and support as enables them to use the law for their defence with as much readiness and freedom as do men. It involves an economical and mental independence of men, whether as fathers or as husbands. If the organization of society greatly hinders women from becoming self-supporting, the wife endures many wrongs to which the ear of the judge would be open, simply because life apart from her husband is starvation. As women become able to earn a living income this economic bond is relaxed. The effect on conjugal life is seen in the greater number of divorces granted to the wife in the northern states. (Table VIII., § 19.) Perhaps the New England woman is somewhat more emancipated, i. e., more independant mentally and legally, than the woman of the middle Atlantic states.

A divorced woman may gain a livelihood either from her own labor or by a second marriage. Therefore it is natural to find divorce most frequent where a woman finds it most easy to earn her bread, and also where wives are most in demand. The latter is probably the case in the trans-Mississippi states, and may serve, in part, to explain the excess of divorces in the far west (Table IX.), the very large proportion granted to wives (Table VIII.), and the fact that in those states suffering wives show less patience than husbands, § 19.

The emancipation of women is closely related to the average age of marrying. Women marry early in those communities where no other vocation is open to them than that of wife and mother. Only sixteen to twenty years of age when she passes out of the control of a father and mother into that of a husband, with no taste of freedom intervening, with a mind and character so unformed as easily to be brought into harmony with or submission to her husband's, with no way of escape open to her after marriage, whatever the law may say, what wonder that the peasant woman of Russia, Ireland or elsewhere shows little inclination to divorce! Where no actual choice is offered, divorce cannot be chosen. Between the cessation of strict parental discipline and the beginning of married life, a period of some length must intervene, in order that a woman may waken to her own equality and independence. Thereafter, any marriage she may contract will be based on equality, not on subjection.

The economic emancipation of women, in the forms it has thus far assumed, is attended by an assimilation of the work of wage-earning women to that of men. Marriage, however, is fundamentally grounded on the differences, physical, intellectual and moral, between the sexes. Consequently a marriage almost invariably recognizes and emphasizes these differences through varieties of work and function. So far as the training of the two sexes prior to marriage has been identical, one or the other must be ill fitted for that life; so far as woman's work has become masculine, her ability to make and keep a home happy is diminished. This result appears most clearly in the wage-earning population, where a girl's marriage is less often a change from one home to another and more often a change from a factory into a home. It is in just these classes that divorce is most frequent. Some confirmation of this conclusion may be drawn from a report of the proceedings of the London Divorce Court quoted by Prof. Robinson.*

**Diagnostics of Divorce*, Journal of Social Science (Am. Ass.), XIV: (1881), p. 136.

"The experience of the English divorce court tends to confirm the opinion that a great deal of the misery to which the working classes are subjected in their homes arises from the inability of women, when they get married, to render their homes comfortable and attractive. In other words, a great many of the women who get married are unfit for married life."

Divorces are most frequent where women are most emancipated, and the percentage granted to the wife in such communities is excessive. For the whole country the percentage to women is increasing. In the first year, 62 per. cent., in the last, 66 per. cent., were granted to the wife.

§ 40. *Growth of Cities.*

The proportion of our population living in cities of over 8000 inhabitants has increased from about 16 per cent. in 1860 to about 25 per cent. in 1890. The native urban population so the census of Massachusetts indicates, are more prone to divorce than the same class of population in the country. Hence the massing of that population in cities at the east and north has probably influenced the divorce rate, although the effect is masked by the presence of the foreign born urban population.

§ 41. *Increase of Industrialism.*

The life of the race on this planet has been divided into four stages, each distinguished from the others by a predominant manner of obtaining food. They are the hunting and fishing stage, the pastoral stage, the agricultural stage, and the industrial stage. It has been further argued that permanent monogamous marriage makes its appearance with the dawn of the agricultural stage. However that may be, it is obvious that we are in the midst of the transition from the agricultural to the industrial stage. Not that hunting, fishing, herding or farming has passed away or is likely so to do. But the characteristic feature of the present day lies in none of these; they have existed in the past; trade, commerce and manufacturing in anything like their present importance, have not. This advance into the industrial period is apparently attended by a modifica-

tion in the relations of the sexes, and perhaps in the nature of marriage. Industrialism tends to eliminate all sexual differences except the physical ones, and to reduce even these to a minimum. It centers in cities, has grown faster and farther at the north than at the south, and perhaps faster in New England than in the middle Atlantic states.

Industrialism involves a close relation between all parts of a community. The newspaper and periodical press mediate the exchange of ideas and information, as the railway and telegraph do of material products; the knowledge that divorces are obtainable is disseminated by the former, the opportunity for cheap and easy transportation to a more alluring field of work is offered by the latter. The number of divorces granted for desertion alone is two-fifths of the whole, and nearly one-half involve this ground as principal or accessory cause. The proportion, too, of divorces for this cause has steadily risen from 34 per cent. in 1867 to 40 per cent. in 1886. The mental and economic emancipation of women has weakened the ties binding a wife to her husband; the facilities for transportation and the reports of golden harvests in California, the Black Hills or Oklahoma have increased the motives for a husband to abandon home and wife.

Industrialism involves a wider knowledge, action under more complex and changeable conditions, and thus a vastly greater mental activity. As the mental life increases, the general differences of sex and the specific differences of persons are accentuated, and the dangers of quarreling increase. A savage finds one squaw about as serviceable as another in attending to the few tasks of the wigwam; in our higher civilization dissensions ending in divorce may begin (Report, pp. 172-178), over a curly dog, or a woman's bangs, or a man's buttons, as well as over spiritualism or religion.

This demand for higher mental life many fail to meet; they succumb under the strain. The growth of industrialism is attended by an increase of insanity, as well as of divorce.

§ 42. *The Spread of Discontent.*

So closely related to the growth of industrialism as hardly to deserve treatment as a separate cause, is the spread of a spirit of restless dissatisfaction. Mr. Bryce has called this "the age of discontent," and this characteristic of the time in this country and Europe manifests itself in a theoretical questioning and criticism of marriage, and, perhaps, in the weakening of its hold upon the community.

Even more characteristic of the industrial age than the increase of insanity is the increase of suicide. This is the highest and deepest expression of discontent with the sum total of conditions constituting one's life. Every suicide involves, for the individual concerned, and practically, not theoretically, a negative answer to the question, Is life worth living? Likewise every divorce involves, for one or both of the parties, and practically, an affirmative answer to the question, Is marriage a failure? Therefore it is not surprising to find a close and constant relation between the statistics of divorce and of suicide. Both are much more common among Protestants than Catholics, in cities than in the country, among the Teutons than the Celts; and both are rapidly increasing. The rates of divorce and of suicide in the particular countries show a close and constant relation, and the proportion of suicides among divorced persons is abnormally large.

The discontent with marriage in its present form shown by the increase of divorce may be compared, not only with the discontent with life shown by suicide, but also, perhaps, with the discontent with the present organization of industry shown in strikes and combinations, and in visions of an entirely new economic organization or of an ideal socialistic state. The discontent in all its phases indicates a desire and hope of great change. For the suicide, even, must regard annihilation as a change and an improvement. Whether the changes will be realized or can be without a fundamental change in human nature, we need not attempt to decide; but ob-

viously the first condition of their realization is that they be desired.

§ 43. *Two Ideals of the Family.*

Once before in the history of the world women have been emancipated legally and economically. It was in the days of the Roman empire. Wives were given by law and by custom greater freedom than ever before; but they gained it by the sacrifice of family life, and under a theory that the wife was a member, not of her husband's, but of her father's household. The legal emancipation of women was attended by a loosening of the ties between husband and wife, a disregard of marriage vows, the moral degradation of the sex and of the community. The family was sacrificed to the wife.

When Christianity obtained the power to legislate, the family was reinstated in supremacy, and the wife again made legally subordinate to her husband. Since the Reformation the legal and economic emancipation of women has made frequent advances; and the problem of the present day in this matter is: How shall the legal and economic emancipation of women be made compatible with the true interests of the family? A clue to the answer may, perhaps, be found in recognizing that there are two ideals of family life, and that, while the emancipation of women is impossible without destroying the one, as it did at Rome, it may be reconciled with the other.

The Roman theory of the family is based on the complete supremacy of the husband and father, *manus* and *patria potestas*. This despotic theory, abandoned by the later Roman jurisprudence, was substantially restored by the canon law, and extended over Europe by the power of the ecclesiastical courts. The view that the wife was owned by her husband, and the not very dissimilar view that her legal personality during marriage was merged and lost in his, were natural and inevitable in times when property in persons, as slaves, was universally recognized and justified, and the original depen-

dence of legal rights upon force hardly lost from sight. Slavery has been perpetuated into our own age. Its central idea, that property in persons is natural and legitimate, still lives and flourishes. Many a man feels himself the owner of wife and child, and treats them as his property.

The kernel of the other ideal of marriage, the democratic ideal, is found in the Teutonic emphasis upon freedom and individuality, and the Teutonic honor of womanhood. This ideal bases the family, not upon the despotic authority of a single head, but upon the consenting and harmonious wills of two equals; not upon *manus*, but upon marriage. The development and establishment of this ideal of the family have been retarded by the influence of the ecclesiastical courts denying the equality of women in marriage, and also by the prevalence of slavery and constant appeals to war and force as final arbiter of all disputes. Even down to the present time, this ideal has not made itself at home in the minds and hearts of all our people, and many a dispute between husband and wife is at bottom a clashing of the old and new, the despotic and democratic theories. As a democracy requires more knowledge and political virtue than a despotism, so the successful and harmonious management of a family on a democratic basis of equality and delegated powers demands more fidelity and more adaptation than when a single will holds sway.

§ 44. *The Remedy.*

The whole argument of this monograph has gone to show that legal provisions of whatever sort have little direct and permanent influence upon divorce. Restrictions on marriage, restrictions on divorce and restrictions on remarriage after divorce, have been tried in various places and at various times, and have proved of little effect.

Law emphasizes rights; at all times of great change in the state or in law, that emphasis becomes excessive. The religious wars to assert the right to freedom of conscience, the French Revolution to proclaim the rights of man, the

American Revolution to maintain the taxpayers' right to representation, and the Civil War to establish the slaves' right to be free, are familiar illustrations. The same is true of that peaceful revolution of the past hundred years by which women's rights have been increased. In all cases where too much has been expected of such legal reforms, disappointment or despair has resulted. The discontent Mr. Bryce finds characteristic of the age is, perhaps, in part explicable as the discouragement resulting from the failure to regenerate the world on either side of the Atlantic by any sort of legislation. New rights can mean only new responsibilities and new duties; unless the one be accepted and the other performed, little or nothing is really gained.

The whole ideal and tendency of our modern civilization are to teach every individual self-direction and self-government. No legal reform can do such work. The state, indeed, may do much, but not directly, through its laws. On the contrary, its main work must be as an educator of public opinion, and, like a wise teacher, it must set lessons not too difficult for the average capacity of the class. It is to hold up a standard of morality as far in advance of the average standard in the community as possible, without bringing the law into contempt or disregard. So far as law contributes to this work of education and moral improvement, it may be of immeasurable value.

Even greater are the opportunities afforded to the state by its schools and institutions of learning. Here it is brought into direct and intimate contact with the minds of citizens, while young and plastic. Moral education on these subjects in our schools is sadly lacking. Obviously, it should relate, not directly to divorce, but to all the relations and duties of home life so constantly and sadly misunderstood. The neglect of these is the seed, and divorce only the fruit.

The church or ethical society has, perhaps, greater power and better opportunities than the state for educating and purifying public opinion. The opportunities have long been sorely

neglected, and public opinion allowed to degenerate. Our situation resembles in some degree that of the Roman Empire. Women, there, were emancipated by law and custom; again they have gained their freedom, legal and economic. A moral or religious reform, like that which came in Christianity, is needed to teach and enforce the new duties that have come with the new rights and new powers: new duties of wives to remain faithful to their husbands, though not compelled as formerly by law or economic dependence; new duties of husbands to treat their wives not as subordinates, but as equals.

If it be admitted that the family is in a state of reconstruction, that its old form is proving insufficient for meeting the new conditions, then a careful and thorough study of the subject, in all its relations, is a prime necessity. Otherwise the education just urged will be incorrect and misleading.

Education in all the relations and admitted duties of home life, moral and religious reform to supply motives for a performance of the duties thus made clear, and study to determine the changes in the family introduced by our new conditions and the attendant change in duties; such are the remedies that appear of permanent value.

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Volume I.]

[Number 2.

THE HISTORY OF
TARIFF ADMINISTRATION
IN THE UNITED STATES

From Colonial Times to the McKinley Administrative Bill.

BY
JOHN DEAN GOSS, PH.D.

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NEW YORK.
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THE HISTORY OF TARIFF ADMINISTRATION IN THE UNITED STATES.

INTRODUCTION.

TAXES are necessary for all governments, and the method of their collection has always been the problem of administrators. Let us take it for granted as long since settled that indirect taxation is the best form from an administrative standpoint. Its most frequent and productive application is now found in the taxation of imports. Import taxes, striking the goods in transit, meet them at their weakest point; the machinery of collection can be made simple and accurate in its workings, while the expense of collection may be reduced to a minimum.

Our national government has seen fit (with a few brief exceptions) to confine itself to indirect taxation, and throughout its history has derived the bulk of its revenue from taxes on imports. If the aim of the United States tariff had been exclusively financial, a better knowledge of administrative methods, derived from a study of foreign institutions, an acquaintance with the necessary requirements combined with a developed business ability, would ere now have solved the problem and would have given us a customs administration simple and

fair, if not—under our present civil service methods—of the highest efficiency and economy. But the adoption of the policy of protection, the very logic of whose honest application compelled the taxation of an almost innumerable list of articles, and the very general introduction of *ad valorem* rates vastly complicated the problem. Another and very difficult element was thus introduced; for the collecting organs, in levying and receiving the tax, not only had to find imported goods and determine their bulk and general nature, but were also compelled to ascertain their value. To do this accurately for a single class of articles requires an intimate knowledge of its innumerable grades, qualities and textures; an extensive acquaintance with foreign markets, with freight rates, commissions, insurance and a multitude of details imperfectly acquired even by a lifelong business experience. Even in standard articles there remains a wide margin of error; while in the numberless new and rare miscellaneous products that are daily increasing in amount, the assessment of valuation in many cases, must be based upon mere conjecture.

The point of greatest friction in any tax system is obviously that of payment; and the greatest patriotism, the strictest personal and business integrity, have been found insufficient to deter men from deceiving the government in all possible ways. The ideal system is that in which the assessor and the taxpayer are as nearly as possible in hearty accord, and where a fair, open spirit prevails in all their dealings. Not only has the opposite condition of things been firmly established in the United States, but this seems to be the legitimate outcome of any system of *ad valorem* duties. Furthermore, the immense development of the consignment system¹ has brought it about that a vast body of importers, especially in New York—where four-fifths of our imports land—are unnaturalized foreigners, out of sympathy with our institutions, and openly and avowedly using every advantage in their dealings with our government.

¹ Finance Report, 1885, Vol. II., p. vi.

As a consequence of these peculiarly embarrassing conditions our present customs system has grown to be what it is; and if in its study we find great imperfections or even great injustice, let us in each case remember the manner of its growth—the unhealthy conditions that have fostered these unseemly results. If in its present state we find many things to criticise and some to condemn, let us see whether a brief review of its history will not lead us to conclude that it has been one of progress, auguring well for the future.

CHAPTER I.

THE COLONIAL PERIOD.

THE colonists were farmers, and the farmer of that day was also blacksmith, mechanic, carpenter, cobbler, weaver and jack of all trades. Not only did the colonial farmer hew his own timber, build his own house, make his own furniture, construct his own rude implements, wear home-spun, eat of his own raising and drink of his own brewing; but the few things that he bought came mostly in exchange, and were as limited as were his wants and as simple as were his habits.

Among a people living thus it is small wonder that the revenue from any system of indirect taxation should but barely pay the cost of its collection. Indeed, the result of attempts to enforce the measures by which England sought to gain a revenue from the colonies was usually a net deficit; while the colonies themselves experienced great difficulty in raising money for their own affairs.¹ Direct trade relations with other countries were limited, and in the case of some articles prohibited, by the British Navigation Laws; and though we hear much of a flourishing illicit traffic, we find that the colonial marine was engaged mainly in the fisheries, and that general commerce was small in amount and confined to few articles. Then again we are struck with the simplicity of the laws, the comparative independence of each official, the hatred of restraint and disregard of all rules, that made every officer a mild autocrat and every underling a sturdy insubordinate. As Professor Sumner² has so plainly pointed out, the national

¹Kalb states that after the seven years' war the colonies were all in debt. Life of J. Kalb by Frederick Knapp, p. 291.

²Life of Hamilton.

characteristics of the pre-revolutionary and revolutionary times were by no means what we have since come to regard as American.

The revolutionists had unlimited time to talk vaguely on abstract matters of freedom, representation and government; they delighted to get together and discuss their wrongs and rights; but their knowledge of good administrative methods was slight, while their interest in governmental efficiency was not apparent. All their ideas were colored with extravagant notions of individual liberty. It is not strange, therefore, that we find them greatly lacking in administrative ability. They hated system, they hated restraint of any kind, and naturally proved anything but efficient administrative officers.

Various obnoxious English customs acts were passed from time to time, and more or less successful attempts were made to enforce them; but the manner of their enforcement seems to have been left largely to the discretion of the resident English officials, who were far from being exemplary administrators. The whole effect of these laws, instead of instructing the colonists in methods of revenue collection, was to familiarize them with methods of evasion, and to emphasize that almost universal desire to cheat the government, whose presence to-day, even among otherwise honorable people, is such a curious phenomenon in public ethics. Before the adoption of the Constitution, however, nearly all the colonies had imposed slight taxes upon imports. The methods of collection were in most cases prescribed with great looseness if at all; while the agents designated were usually local officers whose functions as collectors of imports were added to, and inextricably confused with, a multitude of other entirely inconsistent duties.

In order to obtain a general survey of the various systems in vogue in the colonies, it will be well to take a chief representative from each system—Virginia for the southern system, Massachusetts for the New England system, New York for the Middle States system. The conditions in these colonies were typical of all the others in the respective classes.

I. Virginia Customs Administration.

One of the earliest colonial customs laws that is recorded, aside from those laws imposing dues upon tonnage, which were almost universal, was that passed by the Council of Virginia in 1657-8.¹ In the compass of some twenty lines it provides for the collection of ten shillings a hogshead on all tobacco raised by the sale of Dutch² goods and exported in Dutch vessels; and that any person so required must make statement under oath of all goods brought in or tobacco exported. The commissioner of the county court was required to prevent fraud and to see that the Dutch made truthful statements to the governor's agent under penalty of double the amount involved. Tobacco being practically the sole export of the colony, this was in effect an import tax; but the first strict import duty was not laid till 1661,³ when rum and sugar were required to pay a certain impost and their unloading was forbidden except at appointed ports.

The primitive mode of collection is indicated by the act of October, 1670, which ordered that duties be paid in "money or good bills of exchange," and not as theretofore in goods; and it appears that at this time the county courts appointed the collectors. In 1691 due entry was required stating the amounts, *etc.*, of dutiable goods on board. The duty was to be paid, or bond given for its payment, before the goods were allowed to be put on shore. In case of false entry a penalty of £100 was imposed for each offense.

No changes of importance took place in the import laws of

¹ Henning, *Statutes at Large*, Vol. I., p. 469.

² Dutch was interpreted to mean all foreigners.

³ The different authors of the *Statutes at Large* agree in calling this merely a penalty for not unloading at the prescribed places, but the wording of the Statute certainly warrants the statement of the text, which is further confirmed by the quaint heading of the bill—"Whereas excessive abuse of rum hath by experience bin found to bring diseases and death to diverse people and the purchasing thereof made by the exportation and unfurnishing the country of its owne supply and staple articles, be it enacted," *etc.*

this colony until the revolution taxed its strength and compelled it once more to turn to this source for revenue. In October, 1779, "an act for raising a supply of money for the service of the United States" levied a tax of two and a half per cent. *ad valorem* on all goods "imported and bought to be sold again." This curious piece of legislation did not tax goods on their importation, but on their subsequent sale—the tax to be paid by the purchaser; the "vender to render account upon oath to the commissioners of tax" of every such sale exceeding £1000, within one month after it was made, under penalty of triple the duties thereon. These commissioners were empowered to examine every such purchaser on oath as to how much of the goods were "bought to sell again," and how much for his or his family's consumption, and the tax decided to be due thereon was to be collected by the sheriff in the same manner as other taxes. The "venders" of goods at retail were compellable to testify under oath as to the amount of their sales, and to pay an assessment on their stock in trade. Penalties in triple the amount of duties were stipulated throughout the bill, and suits brought to recover penalties had preference over private suits.

It is not surprising that this remarkable enactment was superseded a year later by another act which, in addition to tonnage dues, laid specific duties on wines, liquors, sugar and molasses, and upon "all imported dry goods except salt, munitions of war and iron from Maryland, * * * one per centum upon the value to be ascertained by the cost thereof at the port where laden * * * or put on board by the captain or owner of the vessel importing the same," to be paid in specie at the port of importation by the captain or owner and collected by the "naval officer." In case of non-payment, concealment or delay, the vessel was to be forfeited. A curious provision of this act, and one which puts our colonial legislators in a somewhat ludicrous light, is the clause providing "as an encouragement to captains and masters" to make a true

and faithful "return of dutied goods," that they should be allowed to import for each 100 tons burden of their vessel "200 pounds worth of goods at first cost duty free."

In November, 1781, on the recommendation of Congress, that body was empowered by the legislature of Virginia to levy a five per cent. duty, and to appoint collectors and make needful regulations [not repugnant to the state laws and constitution] for the collection of the same. The operation of the act was to be suspended until like action was taken by the other states. Entry was to be made within ten days, and the duty paid in cash, or bond given for six months. The ship master was to pay all duties, and was to be reimbursed by the owner of the goods in case they were imported by a person other than the shipowner. A limited provision was made for what we should call shipment in bond from one county to another; and the usual fines and penalties were prescribed. By this law false entry subjected the wrong doer to a fine of £100, but in May, 1783, this was changed to £200 and forfeiture of the goods so entered. Again in October, 1783, following its recommendations of the preceding April, Congress was empowered to collect certain duties under conditions similar to those of the act of 1781, with the added provision that the Governor was to appoint collectors, who were, however, to be removable by Congress.

It is needless to say that none of these later acts went into effect; the states failing to agree and some absolutely refusing to act at all.

2. *Massachusetts Customs Administration.*

In Massachusetts, in the earliest times, the collection of imports, like the collection of excises, was farmed out under the supervision of commissioners.¹ The general import tax of November, 1668,² was also to be administered by a body of

¹ Numerous references throughout the Records of the Massachusetts Bay Colony. Vol. IV., Pt. II., p. 410; Vol. V., p. 51.

² *Ibid.*, Vol. IV., Pt. II., p. 410.

commissioners. The act of the following May¹ (1669) outlined the method of collection. Goods were to pay one penny for every twenty shillings value—this value to be ascertained by adding twenty per cent. to the value at the place whence imported. The “master, purser, boateswaine or skipper” of a ship upon its entering a port and before breaking bulk or landing any goods, must certify their value to the town treasurer or collector “by him empowered.” The collector should thereupon enter in a book kept for that purpose a description of the goods, their marks and coverings, and the name of the person to whom sent. Before landing any goods the owner or importer “must signify the true value thereof by showing the just invoice” to the collector, who should forthwith enter the gross sum in his books and demand and receive the proper rates. In case of denial or delay in payment the collector might levy distress upon the goods. If the invoice were “falsified, concealed or not produced,” the treasurer or collector with the selectmen of each town concerned should rate the goods “according to their best discretion” at not less than £4 per “tun.” In a difficult or doubtful case the officer should “repaire to the governor and council, who would give directions” for the execution of the law.

The order of May 28, 1679,² contained additional provisions requiring all collectors to take oath faithfully to perform their duties, and providing that no more than the legal fees of two shillings per pound be exacted. All dutiable goods were to be landed at appointed wharves, and goods landed without being entered should be put in a warehouse and secured by the collector until the owner made entry and paid the duties.

In 1692³ the compensation of the commission appointed by the governor or council to supervise collection was fixed at one-sixth of the receipts for their own services and those of

¹ Records of the Massachusetts Bay Colony, Vol. IV., Pt. II., p. 418.

² *Ibid.*, Vol. V., p. 214.

³ June 24, 1692, Acts and Resolves, Vol. I., p. 30.

their under officers; but two years later the commission was abolished, and the matter was given into the control of a single salaried commissioner, who was to appoint the under officers, and with the treasurer to determine their compensation.¹

This remained the system until the Revolution. The details of the methods of collection were slowly developed, the law being reënacted each year with a few changes and occasional additions down to 1784, the last year in which the regular customs rates for the province were levied. At this time the law required the master of an arriving vessel to make report and deliver a written manifest to the commissioner within forty-eight hours after arrival. He must also take oath that the manifest contained a just and true account of all imported goods,² and that he would report any others if discovered. If before this any goods were unladen, the master should forfeit £100.³ Owners or consignees of goods must make entry of them in writing, "produce an invoice of such goods as pay *ad valorem*," and make oath before the collector in the following form:⁴

"You, A. B., do swear that the entry of goods or merchandize, as by you made, and the value thereof annexed, is *bona fide*, according to your best skill and judgment, according to the price current or the market price of the said goods."

¹ At first the treasurer was also to aid in their appointment.

² The law of June 9, 1696, Acts and Resolves, Vol. I., p. 236.

³ Law of December 7, 1698, Acts and Resolves, Vol. I., p. 348, increased from £50, as required by law of 1697.

⁴ The law of June 18, 1697, provided that if the collector suspected the invoice he might compel the importer to make oath to it. In 1717 [June 22, Acts and Resolves, Vol. II., p. 77] all invoices were required to be sworn to, and the subsequent laws contain many forms of oaths. At about this time the "original invoice" was to be exhibited, and where it was suspected that the goods were consigned on foreign account special oaths were required of the person by whom the goods were entered, that he was the real owner, and that no foreigner was in any way interested in the goods. This was rendered necessary by the retaliatory discriminating duties against foreign goods.

If the importer could not produce the invoice of liquors imported by him, the casks should be gauged at his expense and the duties levied thereon accordingly. Twelve per cent, was allowed for leakage,¹ and damage allowance was made on "decayed wines" if claimed within twenty days after entry.²

All duties were to be paid before the goods were landed, though the commissioner might at his discretion give limited credits. The master was liable for the duties on all goods listed in his manifest that were not duly entered, and in order to protect himself might retain the goods until they were entered. The ship was also liable for any default of the master or in the payment of duties.³ The naval officer was not to allow a ship to clear until a certificate was shown him, under the hand of the commissioner, that all duties had been paid.⁴ Stores of the ship not to exceed three per cent. of the lading were exempt from entry. The commissioner and his deputies had power to administer oaths and to search for and seize all suspected goods. All penalties, fines and forfeitures recovered were to go one-half "to his majesty for the use of the province" and one-half to the informer.⁵ It is interesting to notice that the salary of the commissioner for the year was £60 "for his labor, care and expenses in said office."

3. *New York Customs Administration.*

The first acts of the Dutch West India Company with reference to the new colony contained provisions for export and import duties. Specific rates were levied on furs and codfish,⁶ and among the early ordinances of the Director and the

¹ Act of June 24, 1692.

² Act of June 9, 1696. Acts and Resolves, Vol. I., p. 236.

³ Law of December 2, 1698. Acts and Resolves, Vol. I., p. 350.

⁴ Law of June 29, 1700. Acts and Resolves, Vol. I., p. 436.

⁵ A similar provision is found in the laws of Virginia.

⁶ Freedom and Exemptions Granted by the West India Company, June 7, 1629. Laws and Ordinances of New Netherlands, pp. 6-8.

Council of New Netherlands, one dated August 19, 1638,¹ required all tobacco exported to be brought to the approved warehouse, inspected by the regular inspector, and the export duty (five out of every one hundred pounds) paid, under penalty of forfeiture of the whole. The ordinance of April 3, 1642,² imposed certain export duties and an import duty of ten per cent. "in kind of wares or money" to be paid the "Receiver of the Companies revenues." A little later (1648)³ all goods were required to be entered with the "Fiscal, or, in his absence at the office of the Receiver," under penalty of forfeiture of the goods and the ship.

Numerous acts followed, the most important being that of April 27, 1656.⁴ Under it all goods were to be entered with the farmer of the revenue or his collector, who should attend at the weighing-house on certain hours of certain days therein prescribed. From him, after entry, the "shipper or merchant" would receive a permit of landing, setting forth the full quantity of goods to be unladen, by whom shipped and to whom consigned. The goods should thereupon be "transported"⁵ before sundown. Under this ordinance the "Fiscal" was to inspect all departing and arriving vessels. Later provisions⁶ forbade goods to be landed till entry had been made and the duties paid. Goods shipped to or from Amsterdam in its trade with this colony were sent through a special warehouse and there opened and marked.⁷

Under the English rule, there was probably at first no great change in the manner of collection, for the law of April 16, 1693, required, as did the former Dutch law, that goods,

¹ *Ibid.*, p. 16.

² *Ibid.*, p. 31.

³ *Ibid.*, p. 86.

⁴ *Ibid.*, p. 220.

⁵ From the context this would appear to mean unladen.

⁶ Laws and Ordinances of New Netherlands, p. 350.

⁷ Law of 1656, *Ibid.*, p. 245. A peculiar prohibition is to be found among these ordinances, declaring that no person should be allowed to offset against duties due, claims against the Company bought by him from the Company's servants. *Ibid.*, p. 410.

whether exported or imported, be brought to the weigh-house in New York and the duties there determined. By refusal so to do the merchant rendered himself liable to certain forfeitures; in case of successful prosecution therefor, the informer or prosecutor was to get one-half of the sum forfeited, besides his costs.

It is difficult to determine when the different features of the New York system were adopted. In 1720¹ we find that the master, mate or purser of an arriving vessel should repair to the custom house and there "declare all the parcels" of dutiable goods that were on board. The owner or consignee of goods was then to make entry, with the collector or deputy, taking oath that the entry was according to the invoice. In case they were European goods, the entry was to be according to their "prime cost." A copy of the entry being given the treasurer, he should furnish a permit, upon the presentation of which the collector should allow all goods therein designated to be unloaded. At this time six weeks credit was allowed on duties. Twenty years later the system had farther developed, and we find it to be in outline as follows.²

The master, mate or purser must within forty-eight hours after the ship's arrival deliver to the treasurer a sworn manifest under his hand, mentioning the quantities of all goods on board and the person to whom they were consigned. The consignee was to make particular entry of the goods, at the same time paying the duties, or, if over ten pounds, securing them to be paid on three months' time. If invoices were produced, he was required to take oath to the effect that the value as stated in the invoice was to the best of his belief the real and true value. If no invoice was produced, the treasurer was to ap-

¹ Acts of the Assembly, 1691-1725, Bradford, p. 197.

² Law of November 3, 1740. Livingston & Smith, *Laws of New York*, Vol. I., p. 281. At this time, in addition to various specific duties, all European and East Indian goods imported were to pay five pounds for every one hundred pounds value "prime cost." There was also a duty on slaves imported, and quite extended provisions for its collection.

point "one credible merchant and the importer another, who were to appraise such goods to the best of their judgments," the appraisement to be at the expense of the importer and to settle the real value of the goods. The certificate of the treasurer as to entry was addressed to the "land and tide waiter"¹—an inspection officer having supervision of the ship and cargo—and permitted the free landing of the goods. The master must indicate at what wharf he would land them, and if landed at another should forfeit five pounds therefor. If goods were landed without permit they were to be forfeited. Sea stores were to be excepted from the manifest, and ten per cent. allowance might be made for leakage. Exported goods when reimported after once having paid duty might be admitted free, on oath to that effect being taken and the circumstances indicated.

The next legislation of importance, aside from the conditional laws passed at the request of Congress and which never went into effect, was in 1784² when a law of some completeness was enacted, levying specific duties on a considerable list of articles and an *ad valorem* duty of £2 10d on every "£100 value prime cost" on all goods imported excepting some few enumerated, and all goods, wares and merchandise of the growth, product or manufacture of the United States of America or any of them.

The provisions made in this act for collection are of considerable interest, as it seems more than any one other to have formed the basis for the first customs collection laws of the United States. It provides in outline as follows.

Within seventy-two hours after a vessel's arrival at any harbor in the state (south or east of New York—except Sagg

¹ A term borrowed from the English law. When these officers were first introduced into the New York system does not appear, and their exact duties are nowhere defined. Section 10 of the law of December 12, 1753, [Van Schaak. Laws of New York, Vol. I., p. 326] requires that they should take an oath not to accept any fee or gratuity whatsoever. See *infra*, law of 1784.

² March 22, Laws of New York, Vol. I., p. 599.

Harbor) the master, mate or purser, under penalty of £100 for neglect and £500 for fraud, was to deliver to the collector of the port of New York an exact and true manifest of all "goods, wares and merchandise" which the ship had on board at the time of leaving her last port or subsequently, and particularly specifying the "packages, bales, casks, chests, trunks, cases or boxes" with their marks and numbers, and the names of the owners or consignees. This manifest was to be sworn to according to a prescribed form, and the duties appearing due thereon were to be paid or secured before any goods could be landed. Goods landed in violation of this provision, or at any time between sunset and sunrise, were to be forfeited, and the master was to incur a penalty of double their value. If the collector suspected the manifest he might cause the ship to be thoroughly inspected by the "land and tide waiters," who might affix locks, for further protection, to all hatches, *etc.*, of the vessel during the night.

The next step was for all persons having goods on board to make particular entry of such goods by exhibiting the original invoices, leaving copies of them and taking a prescribed oath as to their accuracy. The duties were ascertained, and if less than £20 were to be paid in cash, or if exceeding that sum were to be secured by a bond with two sufficient sureties on three months' time. Thereupon the collector was to deliver to the importer a certificate directed to any land and tide waiter, stating that the duty on certain goods had been paid or secured and that they might be landed. But in case the collector suspected fraud in the invoice he might cause the goods to be examined, and any packages containing uninvoiced goods were to be forfeited. If any dispute arose as to the value of any dutiable goods, or in case of damage resulting to them on the voyage, appraisement might be had at the expense of the contesting importer. The collector was to appoint one merchant and the importer another, who upon taking oath before a justice of the peace well and truly to

appraise the goods, were to determine their value; but in case they were unable to agree they might jointly appoint a third merchant to join them, the decision of any two being binding.

Goods consigned to another state should be so declared in the manifest, and upon fulfilling certain formalities, the person exporting the goods might bring them in duty free, on executing a bond with two sufficient sureties in double the amount of the duty. If within twelve months proof were not produced of the arrival of the goods at their destined port or of their loss at sea, the bond was to be prosecuted. Penalties provided for might be sued in any court of record by any person, one-half to go to the state and one-half to the person bringing suit. The governor, with the consent of the council, was to appoint the collector, gaugers, weigh-masters and land and tide waiters.¹ The collector was to give official bond, to keep books and render quarterly accounts.²

On November 18th of the same year, "an act for the establishment of a custom house" was passed, which farther defined the form of official oaths and bonds, the duties and fees of custom officers and provided for the appointment of a "surveyor and searcher," who had practical superintendence of the harbor and of the "land and tide waiters."

In 1786, New York granted to the United States certain imposts enumerated, which were to be collected by the New York officials according to the New York law, their expenses to be deducted from the receipts.³ On March 12, 1788, the

¹ The duties of these officers were prescribed in the law, but are sufficiently indicated by their names.

² The pay of the New York collector was "a salary at the rate of £1200 per annum as a full reward and compensation for his services, and for house or office rent, clerk hire, fire-wood, messengers or servants to attend to the office, stationery and all other contingent expenses whatever."

³ With this style of support, it is little to be wondered at that the Continental Congress was never able to levy an impost duty. This act was to go into effect when the same imposts had been agreed to by the other states—a fine example of New York's dictatorial position.

collector was empowered to appoint certain stores as bonded warehouses, wherein goods might be stored duty free, bonds being given in double the amount of the duties due. The duty was to be paid from time to time as they were withdrawn for use, or remitted in case they were exported within eighteen months after entry.

CHAPTER II.

NATIONAL TARIFF ADMINISTRATION OF THE EIGHTEENTH CENTURY.

UNDER the confederation of 1777 the Continental Congress made numerous but futile efforts to induce the states to join in levying taxes on imports for the benefit of the common treasury.¹ Indeed this was about the only feasible method of raising revenue that the articles would allow. The first or second act passed after the organization of the Congress, under the constitution of 1787, was "an act for laying a duty on goods, wares and merchandise."² Besides specific duties on a few articles, this law imposed *ad valorem* duties varying from fifteen to seven per cent. on certain enumerated articles and five per cent. on all other goods, with a few exceptions. In the same month "an act to regulate the collection of duties," *etc.*, was passed.³ This act divided the country into collection districts, and enumerated the ports of entry and delivery, of which there must be at least one in each district. In some thirty-eight sections it proceeded to form the entire machinery and process of collection. It is plainly a hasty compilation from the laws of the various states—following very closely the late laws of New York, and even copying whole sections almost *verbatim*.

I. Customs Officers.

The collection districts were mapped out then with refer-

¹ Rhode Island was the most obstinate in its refusal to comply with the request of Congress, claiming that in some inscrutable way it would tend peculiarly to the detriment of her commerce.

² Act of July 4, 1789. Statutes at Large, Vol. I., p. 24.

³ Act of July 31, 1789. Statutes at Large, Vol. I., p. 29.

ence to the state lines, no district lying in more than one state; but this has long since been disregarded, and, as the result of subsequent legislation, district lines now have no reference to any local divisions.

The officers provided for were the collectors, deputy collectors, naval officers, surveyors, weighers, measurers, gaugers and inspectors. Each district was allowed a collector at its port of entry and a surveyor at each of the ports of delivery. The ports of entry also had a surveyor and the larger ones a naval officer. Thus the higher officers of what has since become the normal port were the collector, naval officer and surveyor.¹ As their duties have in general remained the same, it may be profitable to notice how they were fixed by this act.

The collector was to receive all reports, manifests and documents, and to keep a record of them, to receive the entry of all ships and goods together with the invoices of the latter. He was to estimate the duties payable thereon and endorse the same on each entry; to grant all permits of unloading, *etc.*, and to employ all weighers, measurers, gaugers and inspectors in addition to such other persons as were necessary. With the assent of "the 'principal officer' of the treasury department" he could designate store-houses for the safe-keeping of goods.

The naval officer² was to countersign all orders of the collector, to receive copies of all manifests, and to act in general as a check upon the collector.

The surveyor was to superintend all weighers, measurers and gaugers, and to have general supervision of the boarding of arriving vessels and the inspection of their cargoes.

The deputy collector was appointed by the collector, who was responsible for his acts, and might exercise the same authority as the collector.

¹ Appointed by the President by and with the advice and consent of the Senate.

² The usefulness of this officer has been often doubted, and the abolition of the office altogether strongly urged.

2. *Entry of Goods and Collection of Duties.*

The main provisions of the act and the general method of entry and collection were the same as those previously explained under the New York law of 1784. The master was to deliver two manifests to the boarding officer—one of which was signed and returned to him and the other transmitted to the collector (§ 10). He was also to make entry, under oath, within forty-eight hours after arrival of the vessel, and further entry of goods on board was to be made by the owners. (§ 11).

The inspector took the place of the "land and tide waiter." He had the same functions except that at the expiration of fifteen days¹ from the arrival of the ship he was to take charge of all goods not yet unloaded and hand them over to the collector to be kept for nine months at the risk of the owner in the public stores. If not claimed within that time, they were to be appraised by two reputable merchants and sold for the benefit of the United States.

Ad valorem duties upon all goods at the place of importation should be "estimated by adding twenty per cent. to the actual cost thereof if imported from the Cape of Good Hope or any place beyond the same, and ten per cent on the actual cost if imported from any other place or country, exclusive of all charges" (§ 17). Before permit for landing goods should be given, the duties were to be paid in cash, if under fifty dollars, if more than that sum they might be secured by a bond. The bonds were to run from four to twelve months, according to the class of goods. They were to be signed by one or more sufficient sureties, and in each case of default to be prosecuted by the collector. Ten per cent. discount was allowed for prompt payment (§ 19).

¹ This limit, as found in § 56 of the law of 1799, remained the same until the Act of March 2, 1861, 36 Congress, Sess. II, Ch. 81, where eight days was allowed for a ship under 300 tons, twelve days for one between 300 and 800 tons, and fifteen days for those of over 800 tons.

All drawbacks allowed by law¹ on the exportation of goods, wares and merchandise imported, should be paid or allowed by the collector at whose office the said goods, *etc.*, had been entered and not otherwise, less one per cent. which was retained for the benefit of the United States (§ 31). The bounty allowed on the exportation of fish was to be paid in the same manner.

If any officer should receive a fee or bribe he should forfeit not less than \$200 nor more than \$2,000 for each offense, and be forever disabled from holding any office of trust or profit under the United States (§ 35). There was a penalty of not more than \$1,000 and imprisonment for not more than one year for false oath of importer or ship master. All penalties, fines and forfeitures were to be divided, one moiety to go to the United States, the other to the collector, naval officer and surveyor of the district, or any one or two of them in the district. But in all cases where there was an informant he should receive the moiety apportioned to the United States (§ 38).

This law remained in force barely one year, and was repealed by the act of August 4, 1790,² which was little more than a rearrangement of the one it superseded. This act still more hopelessly jumbled up the officers of the various districts, collectors being assigned to single ports within other collectors' districts, and the whole list being arranged seemingly without any system whatever.

The only additional features of any importance were those regulating the unloading of vessels driven into port by stress of weather and allowing the sale of as much of the cargo as was necessary to pay for repairs. Certain allowances were made for tare, drafts, *etc.*, on bulk goods. Two per cent. was allowed for leakage on wines, *etc.* Damaged goods in both

¹ Act of July 4 allowed drawbacks on all articles shipped within twelve months of their entry except on distilled spirits other than brandy or geneva.

² Statutes at Large, Vol. I., p. 145, Chap. xxxv.

these acts were appraised in the same manner as goods with a false or defective invoice, or with none at all (§ 35).¹ The President was also authorized to order revenue cutters to be built, officered and armed.

No further changes of importance were made in custom regulations during the next nine years, although the tariff rates were raised and changed at various times. On March 3, 1797,² the percentages received by the different officers at the various ports on the gross receipts at their respective points were rearranged and definitely fixed, and the compensations of the lower officers were stated.³

3. System Established by Act of 1799.

On March 2, 1799, all former laws were repealed and their place taken by the elaborate enactment which "has remained to this day as the foundation and the framework of subsequent legislation for the taking possession of arriving merchandise and the levying and collecting of duties thereon."⁴

Up to this time the yearly income from customs had never reached ten million dollars,⁵ and was far more evenly distributed among the different ports than it has since been. The number of officers at any port was small and the collector had been allowed to use his own common sense and business ability with regard to the direction of office methods and details of the administration, and might please himself as to the forms of most of the documents, bonds, *etc.*, required to pass through his hands. But it was evident that to afford any adequate method of supervision or control, more minute regulations must be imposed and standard forms established. The system had been in operation so long that inspection of

¹ The laws of the colonies had been much more liberal than this, in some the allowance being fixed at as high as twenty per cent.

² Statutes at Large, Vol. I., p. 502.

³ These were increased by act of 1832 and maximum rates fixed.

⁴ Secretary Manning in Finance Report for 1885, Vol. II., p. iv.

⁵ In 1800 it was \$9,080,932.

accumulated records and comparison of forms and methods followed in the light of the experience which their operation had given, could furnish an ample basis on which to construct a more complete working system—a codification, as it were, of customs administrative law. This Congress proceeded to do, and with such remarkable skill and thoroughness that, although our revenues from imports have doubled many times over since then, and in spite of the bewildering complexity and variety of articles subject to duty as well as of the improved means of transportation and the many changes in the facilities and methods of conducting business, the act passed in 1799 has remained the trunk upon which all subsequent enactments have been grafted. It fills eighty-two pages in the statute book and goes into great detail, containing no less than fifty-six forms, prescribing eleven different bonds, indicating fourteen different kinds of schedules and providing for nineteen separate oaths. X

The system provided for local agencies with the collectors at their head. The collector was the agent for communication with the other departments and with the central authorities. In the larger ports his more important acts were supervised by a naval officer, and his chief lieutenant out of doors was the surveyor. The duties of the minor officers were more or less minutely defined and were in general as previously described. The country was again redistricted, this time on a definite plan, with one port of entry in each district at which the collector of the district resided. There might also be a surveyor, and possibly a naval officer, according to the importance of the district. Other ports of delivery of sufficient importance within the district were provided with surveyors. The principal officers were required to give bonds, and all officers were required to take oath that they would faithfully perform their duties. This was taken before any competent magistrate by the collector, and before the collector by all the other officers, and was then to be transmitted to the controller.

The provisions for the delivery of the manifest, its contents and form were exactly prescribed, but followed in general the provisions of the previous laws, except that special formalities and papers were required for cargoes containing spirits, wines or teas. Special bonds were required for shipment from district to district or to a foreign port. The manifest was now required to contain a list of all passengers and a description of all their baggage, together with a complete account of all remaining "sea stores" and ship supplies, which of course were to be exempt from duty.

"Wearing apparel, and other personal property, and the tools and implements of a mechanical trade only," belonging to persons who arrived in the United States, were free and exempted from duty (§ 40).¹ Descriptions of all baggage and its contents were required to be furnished, and an oath taken that they were intended solely for the use of the person importing or for the use of his family. But in lieu of the latter declaration the collector and naval officer, whenever they saw fit, might cause the baggage to be searched and duty levied on all goods found therein, which in their opinion ought not to be exempted. In case any articles were found which were not enumerated in the entry, they were to be forfeited and the person in whose baggage they were found was to forfeit treble their value. Entry of goods by owner, agent or importer was to be made within fifteen days after the master's report, and the formalities therefor were fully described. As in the former laws, the collector was still permitted at his discretion to hold so much of the goods as he deemed sufficient to secure the duties, in place of sureties on the bond; and in case of default on the bond he might sell them at public auction, rendering the overplus to the importer.

The duties of the various officers were more accurately mapped out than in the former acts; the forms of their certi-

¹ For the present provisions see "Wearing apparel," Free List § 2 of the last act.

cates to importers and their reports to the collector were prescribed, and the previous set of fines and penalties was left practically unaltered.

Over ten pages were filled with regulations respecting the exportation of goods on which drawback was allowed. In substance they required the exporter of imported goods entitled to drawback to show within one year after exportation if to Europe, or two years if to Asia, a certificate from the foreign consignee, receipting for and declaring to have received the goods, which were specifically described; this to be sworn to by the chief officer of the vessel bearing the goods and to be confirmed by a certificate under the hand and seal of the consul or agent of the United States residing at such place, stating the same to be true or to be "worthy of full faith and credit." Where there was no resident consul or agent the certificate of the consignee was to be supported by that of two "reputable American merchants residing at said place, or, if there were no such American merchants, by the certificate of two reputable foreign merchants." This clause is of interest as being the first mention of consular participation in the verification of invoices, and as probably suggesting the subsequent extension of this practice to imported goods also,¹ which has since become a prominent feature and one of the greatest sources of annoyance and scandal in our entire revenue system.

All officers of customs were forbidden under penalty of five hundred dollars to be concerned directly or indirectly in shipping or commerce. The act also repeats the "moiety provisions" of the old law with regard to the division of moneys received from fines and forfeitures, with the addition that when the information was contributed by any officer of a revenue cutter, one-quarter should go to the United States, one-quarter to the customs officers, and the remainder be divided among the officers of the cutter "agreeably to their pay."

It was further provided that, except in certain districts, no

¹ Act of April 20, 1818.

goods were to be brought into the United States except by sea and in vessels of at least thirty tons burden (§ 92). "Useful beasts" imported for breeding puposes, upon oath or affirmation to that effect, were allowed to be brought in free. One section (§ 102), provided that cutters and boats used in the revenue service "shall be distinguished by an ensign and pendant [sic] with such marks thereon as shall be directed by the President."¹

The minimum size of casks and packages in which beer, wine, *etc.*, should be imported was prescribed (§ 103). This is the forerunner of that vexatious legislation restricting the size and shape of imported packages; the cause of no little grumbling under our most recent tariffs. The remaining sections of the bill provided for the transportation of Canadian goods through our territory in bond, the goods being subject to entry and examination in the same way as goods imported for consumption.

On the same day another and supplemental statute was passed fixing the rates of fees, the division of them among the various officers, and the compensation of the minor persons in the service.

¹ The revenue flag was adopted and announced in the circular of the Secretary of the Treasury, Aug. 1, 1799.

CHAPTER III.

THE DEVELOPMENT OF THE SYSTEM ESTABLISHED BY THE ACT OF 1799 UP TO THE CIVIL WAR.

1. Prevention of Undervaluation.

AFTER the passage of the exhaustive Act of 1799 very little tinkering was done with customs administration for a number of years.¹ From time to time minor regulations of little importance were imposed, and special temporary measures were adopted during the war of 1812. In 1816 the pay of all the minor officers was increased one-half. On March 3, 1817,² the rule regulating the estimation of values on goods subject to *ad valorem* rates was changed so as to read "it shall be calculated on the net cost of the article at the place whence imported, exclusive of packages, commissions, charges of transportation, export duty and all other charges," with the usual additions theretofore established of twenty per cent and ten per cent. respectively.

The next important act after that of 1799 was that of April 20, 1818, whereby the time for which goods were to be held, when not admitted to entry because of the failure of importer to produce the original invoice, was shortened to six months (nine months if from beyond the Cape of Good Hope).³ And

¹ List of intervening Acts: March 2, 1803, Statutes at Large, Vol. II., p. 209; February 22, 1805, Statutes at Large, Vol. II., p. 315; April 21, 1806, Statutes at Large, Vol. II., p. 399; February 4, 1815, Statutes at Large, Vol. III., p. 196; March 3, 1815, Statutes at Large, Vol. III., p. 231.

² Statutes at Large, Vol. III., p. 369.

³ Former laws had required the original invoice to be produced, but no special method of procedure in default thereof was established. The method probably followed was that prescribed where goods were not entered within the fifteen days allowed. *Cf. supra*, p. 26.

the Secretary of the Treasury was given the authority, if he deemed it expedient, to direct the collector to admit the goods to entry *on an appraisement*. The President was to appoint two persons well qualified to perform that duty, at a salary of \$1,500 per annum (at New York \$2,000), to be appraisers at each of the ports of Boston, New York, Philadelphia, Baltimore, Charleston and New Orleans. On taking oath "faithfully to inspect and examine" goods, and to "report the true value thereof when purchased" to the collector, these persons, together with a disinterested resident merchant selected by the importer, were to act as a board of appraisement where appraisement should be required and directed (§ 9).¹ The collector might direct such appraisement whenever, in his opinion, "there shall be just grounds to suspect that goods, wares and merchandise * * * have been invoiced below the true value" (§ 11). If the appraised value exceeded that declared in the invoice by twenty-five per cent., then in addition to the regular ten or twenty per cent., there should be added fifty per cent. on the appraised value. On this aggregate amount the duties should be estimated.²

Prior to this time it had been customary for the collector to accept the invoice accompanied by the oath of the person making entry, as exhibiting the real dutiable value of the goods imported. But the greatly increased duties imposed in 1816 had proved too strong a strain on the consciences of many importers; and the conviction had forced itself upon observant persons that undervaluation was frequently resorted to. This legislation was thus adopted as a protection to the revenue and to the honest importer.

¹ When appraisement was to be made in ports other than those above named, two respectable resident merchants selected by the collector, together with one chosen by the party in interest, were to constitute the board.

² In all cases where the value thus appraised exceeded the invoice value by less than twenty-five per cent., the appraised value was to be taken as the true one. But wherever the invoice value exceeded the appraised value, the former was to govern in the same manner as if no appraisement had been made.

As a further protection against undervaluations it was provided that in addition to the oath required of the owner, importer, consignee or agent on the entry of any goods, wares or merchandise,¹ such owner, consignee, agent or importer should declare on oath, when goods were entered subject to an *ad valorem* duty, that the invoice produced by him "exhibits the true value of such goods, wares or merchandise in their actual state of manufacture, at the place from which the same were imported." In case of consignment if the person authorized to receive them did not appear to make this oath, the goods were to be stored at the owner's risk in the public warehouse. And if the oath was not made or produced within four months, the goods were to be subject to appraisement.

It was also provided (§ 8) that goods imported and belonging to a person residing, at the time being, outside of the United States, should not be admitted to entry unless the invoice of the goods was verified in the manner prescribed (in the 5th section) before the consul of the United States at the port from which the goods were shipped, or before a consul of the United States in the country in which that port was situated.² He should further declare on oath as to whether he was in any way interested in the profits of their manufacture, and if so that the prices charged in the invoice represented the current value at the place of manufacture and such as he "would have received if the same had been there sold in the usual course of trade."

By this law the value of goods subject to *ad valorem* rates was to be estimated by including all charges except commissions, outside packages and insurance. As an additional precaution against fraud in the invoice, the collector was required to cause at least one package of every invoice and one package at least out of every fifty packages to be opened and examined. If this package was found not to correspond with, or to be

¹ That required by the law of 1799.

² If there were no consul in the country, the oath could be taken before a notary public or other officer authorized to administer oaths.

falsely charged in, the invoice, full examination of all goods contained in the invoice was to be made. If any package were found to contain goods not described in the invoice, the whole of that package was to be forfeited and an appraisement of all the goods was to be taken, as prescribed in section eleven.

Undoubtedly, as has often been claimed, frauds of some magnitude have been successfully perpetrated by collusion in the designation of the packages to be examined, as required by this section and its subsequent modifications. But as no good remedy except the cumbersome and expensive one of examining all goods and packages has so far been proposed, and as this only demands for its honest enforcement that the officers be reasonably honest, we must really charge the frauds not to defective regulations but to dishonest service. It may be as well to state what we must always keep in mind in dealing with any method of tax collection; namely: that, while avoiding the introduction of undue temptations in any form and restricting as far as possible all opportunities for collusion, we must proceed on the assumption that the public servants are honorable. It is utterly and plainly impossible to do any work well with rotten machinery.

During the years from 1818 to 1823, and more particularly in 1820, there arose in connection with the proposed increase in protective duties an active agitation for "reforms" and changes in the administration of customs revenue. Resolutions were introduced in Congress in December, 1819, for the abolition of drawbacks,¹ and bills were framed providing for a considerable shortening of what seem to us the unreasonably long credits then allowed on importations. But the proposals met with such a storm of opposition and with such an overwhelming mass of arguments for the retention of the old system that nothing came of them, and the matter rested for ten years.² Connected with this was the more successful outcry against the so-called "auction system."

¹ Cf. *supra*, pp. 27 and 31, and *infra*, p. 84.

² See article in *North American Review*, Vol. XII., p. 60.

2. *The Auction System.*

Whether the auction system was really a serious affliction to American merchants, we cannot strictly say.¹ It would seem that there would have been many other ways open for the accomplishment of the same results, had there been no such thing as the "auction system." But rightly or wrongly the merchants, oppressed by the hard times and "low prices" of that period, seeking for some cause or some unfortunate institution on which to vent their spite, pounced upon this system, bitterly attacked it and made it the scape-goat of all their misfortunes.² It was really a combination of circumstances that made it prominent. But it was the loose methods of the custom house, and the inadequate protection against fraudulent undervaluation, together with the high duties of the tariff of 1816 that rendered it oppressive; or we should rather say that it was these latter facts which formed the true oppression to the honest American importer, and not the much abused "system" which happened to be the final and most conspicuous, although really most innocent, part of a line of fraud that ran back through the custom house and had its impulse in the dull times and over-production in Europe.

The stagnation in business in the years immediately following the last Napoleonic war was marked. The extravagant hopes of great commercial activity upon the renewal of the long-suspended trade relations, and the re-opening of the continental markets, caused an immense production of goods in

¹ Cf. Essay on the Warehousing System and the Government Credits, published by the Philadelphia Board of Trade, 1828, p. 18.

² The auction system was very widespread and was prominent for many years. But as a cause for tariff evasion it may be easily overestimated. Indeed we have practically the same system of consignment to-day without any general use of the auction room. In this connection undue prominence is given the auction system by some writers. Bolles, in his "Financial History of the United States," finding a temptingly large literature on the subject, has utilized it to fill a considerable part of the space which he devotes to the discussion of customs collection. It is perhaps unnecessary to warn the reader against placing implicit confidence in Mr. Bolles' work.

England, which impoverished Europe was unable to purchase. The great accumulated stocks of British manufacturers, in most cases produced on credit, necessitated the forcing of a market somewhere and at any price. Facilities were found for this, it is claimed, ready at hand in the auction system so prevalent at that time.

Foreigners would ship in their goods, the auctioneer giving the custom-house bonds, since it was necessary that these bonds be given by a citizen of the United States. As the goods were greatly undervalued in the invoice, and were immediately sold for what they would bring, there was very little expense in the transaction.¹ Opposition raged for years against the system, and New York finally levied a tax upon auction sales.²

Of course the only remedy for these frauds was found in the deterrent legislation which commenced in 1818, and which was further perfected by the Act of March 1, 1823. This drew a plain distinction between goods purchased abroad to be imported by the purchaser, and those not actually acquired by bargain or sale, but imported by the manufacturer.

This legislation set out at length the forms of entry and the oaths to be administered by the collector. They were all very full and explicit, and apparently left no room for quibbling or deceit without perjury.

1st. The consignee, importer or agent, was to swear in substance that the invoice presented was the only one received, expected or known to exist; that it was unaltered; that nothing was concealed to the disadvantage of the United States; that on receipt of any other invoice it would be made known to the collector; and that to the best of his knowledge and belief the invoice produced exhibited the actual cost or the fair

¹ The total receipts from such sales between 1810 and 1828 are estimated at \$225,000,000.

² See Remarks on the Auction System as practiced in New York (N. Y., 1828). Memorial presented to Congress by the citizens of Philadelphia, Feb., 1817, and Memorial from the State of Delaware; in the Addresses of the Philadelphia Society for the Promotion of Industry, pp. 265 and 274.

market value of the said goods, *etc.*, "at the time or times and place or places where procured or purchased," and no other or different "discount, bounty or drawback, but such as has been actually allowed on the same."

2d. The owner's and purchaser's oath was very much the same as the foregoing with the added clause, that the invoice contained a "just and faithful account of the actual cost of said goods, and of all charges thereon, including charges of purchasing, carriage, bleaching, dyeing, dressing, finishing, putting up and packing."

3d. The manufacturer's and owner's oath was the same as the second, except that in place of the words "actual cost," are substituted: "a just and true valuation of the goods at their fair market value."

Section seven repeated in slightly changed form the requirement¹ of authentication by a United States consul or commercial agent or a public officer. In case of the absence of such authentication, the goods were to be deemed suspected and liable to the same additions and penalties as in case of fraudulent invoices.

Practically the same regulations as to appraisement were retained, but with the addition (§ 18) that in all cases where the owner, consignee, importer or agent was dissatisfied with the appraisement it would be lawful for him to employ, at his own expense, two respectable resident merchants who, after being duly qualified, should act with the two official appraisers as a board of appraisement, and should report the value of the goods if they agreed therein and, if not, the circumstances of their disagreement, to the collector. If the importer were still dissatisfied he might appeal the case to the Secretary of the Treasury who was fully empowered to decide thereon. One-half the excess of duties, caused by adding fifty per cent. in case the reappraisement raised the invoice more than twenty-five per cent., was to be divided, according to the

¹ § 8, see *supra*, p. 35.

moieties clause of the act of 1799, except that in no case should the appraisers be entitled to receive any part thereof. Under this act dutiable value was estimated by including all charges except insurance. But the appraisers were to value goods at the "current value at the time of exportation in the country where the same may have been originally manufactured or produced."

3. *Appraisement Reforms of 1830.*

Although these laws must have been a check to the grosser frauds upon the revenue, the importer's invoice was still received in the majority of cases as correct, and no examination or appraisement was ordered unless the suspicions of the collector happened to be aroused. It was becoming evident, however, that a scheme of valuation which relied so completely on the honesty of none too scrupulous foreign importers was a direct discrimination against native dealers, and placed too high a premium upon perjury, with too slight means for its detection to work at all justly.

The tariff law of May 19th, 1828,¹ declared that in all cases where *ad valorem* rates were levied upon goods imported, it should be the duty of the collector to have them appraised at their actual value, "any invoice or affidavit thereto, to the contrary notwithstanding," and that in all cases where the actual value so ascertained should exceed the invoice value by ten per cent., fifty per cent. additional should be charged; that is, the duties should be raised one-half. The stringency of this provision, however, was greatly lessened by a proviso that nothing in the section should be construed to impose this fifty per cent. additional for a variance of a *bona fide* invoice of goods from their actual value.

- About this time the general discussion of the tariff and the continued prominence of tariff questions in the public mind seems to have called some attention to the methods of its administration as well.

¹ Statutes at Large, Vol. IV., p. 274.

No better opportunity could be offered for a change in methods than that which a change of principles affords. When the people begin to distrust an old principle, they are apt to distrust all things connected with it. When they attempt to discard a settled policy, they are willing to throw off with it many of the purely incidental features of its application. They are then open to reforms, changes, even experiments. That there was need of reform in the customs administration was plainly evident in many directions. A mere examination of the records of some departments is sufficient to condemn them. As a sample of the inefficiency of parts of the service and the general laxness in the system of public accounts prevalent at this time, it is only necessary to state that during the seven years preceding 1828 the nominal exports of spices on which drawbacks were obtained, in spite of the fact that they were not produced, but, on the contrary, were extensively consumed in the United States, exceeded the nominal imports by \$168,155. As further illustrative of the condition of the service under the method of compensation in large part through fees,¹ it may be mentioned that in many places the inspectors received more than double the compensation of the collectors who employed them.² Great embarrassment in the conduct of business was also experienced by the various ways in which these fees were computed. There was hopeless lack of order in the classification of the various ports. At some the custom houses were built or purchased by the government; while at others the collectors were compelled to furnish them at their own expense.

The report of the Secretary of the Treasury for 1829 called the attention of Congress to some of the objectionable features of the prevailing practice, and indicated certain necessary reforms which Congress partially incorporated in the law of May 28, 1830.

¹ See repealing laws of 1870 and 1890, *infra*, pp. 68 and 87.

² Report of Secretary Ingham, December, 1829.

The President was authorized to appoint an additional appraiser for New York,¹ and the Secretary of the Treasury to appoint not exceeding four *assistant appraisers*, two in Philadelphia and two in Boston,² "who shall be practically acquainted with the quality and value of some one or more of the chief articles of importation." They were to examine such goods as the principal appraisers might direct, and report the value to them for revision and correction before it was handed to the collector. But in any case where the collector deemed the appraisement too low he might direct a reappraisement, either by the principal appraisers or by three merchants designated by him for that purpose. If the importer was dissatisfied with the appraised value, he should apply to the collector in writing, stating the reasons for his opinion. Thereupon the collector was to appoint one merchant "skilled in the value of such goods," and the merchant was to appoint another. In case of disagreement, these two were to appoint an umpire. When a majority of them agreed, they should report the result to the collector. In case this differed from the value set by the government appraisers, the collector was to decide between them. One package at least out of every twenty was now to be examined.³

A provision which was the forerunner of several similar ones that have caused great annoyance to appraising officers was the one requiring that when goods of which cotton or wool was a component part were found in the same package, the value of the best article contained in such package should be taken as the average value of the whole. Indeed as the law went promptly into effect there was very general complaint

¹ Heretofore two appraisers had constituted the force at New York, but the law of 1828, requiring the appraisement of all goods imported, threw an overwhelming amount of work upon them, as at this time more than half the total imports entered at that port.

² Their salaries were to be at New York \$1500 a year; at Philadelphia and Boston \$1200.

³ Formerly one in fifty. See *supra*, p. 35.

from importers, who from the lack of sufficient notice were compelled in some instances to pay unreasonable duties. There was no definite requirement as to what size and form of parcel should constitute a package, and some kinds of goods such as laces, *etc.*, were, it was claimed, almost necessarily imported in packages containing several classes of different values. This affords an illustration of what complications a seemingly simple provision may create.

In his report for 1830 Secretary of the Treasury Ingham made several suggestions looking to changes in revenue collection in contemplation of expected tariff legislation. By far the most important of these was the substitution of "home valuation" in place of the "foreign valuation," which had always hitherto been the basis of appraisement. In the course of a somewhat extensive argument, he called attention to the impossibility of the officers keeping themselves informed as to current value in foreign markets with sufficient precision to render it an item of uniform ratio to that of current value in the United States.

This same difficulty exists to-day. But he went on to show that as long as the current value, or rather the invoice price of goods in the foreign market, was made the basis on which duties were laid, peculiar advantages were given to those having special opportunities of purchasing or making up invoices at rates below the real value; that is, advantage was given to the foreign merchant who thereby had the benefit not only of greater intimacy with the foreign markets—which might be presumed to be offset by the American's advantage in selling—but also of the fact that he could in consequence enter his goods lower and pay less duties. It was chiefly owing to this that extensive branches of importing business were tending to fall more and more into the hands of foreign merchants, and of those who, whether foreign or American, were least scrupulous in their dealings. Subsequent experience has borne out these statements. But they seem to be the inherent tenden-

cies of any *ad valorem* system, if not its necessary results. The remedy proposed was to adopt "the current value in the United States" as the dutiable value—disregarding, of course, the cost in the foreign market, and excluding all charges and additions. It was urged in support of this plan that the officers, by proper attention and diligence, could readily ascertain the current value of goods in their vicinity, that a mass of information could speedily be collected to correct errors, and that the effect of such an arrangement would be to steady prices, to expose merchants to less hazard, and to restore as far as possible the equality between foreign and domestic dealers.

This principle was adopted in the law of March 2, 1833, but its application was to be postponed till after June 30, 1842.¹ Before that time had arrived, a secretary hostile to the plan had taken office, and the great difficulties of its enforcement were more plainly seen, so that it was in actual or rather attempted operation for only a few months before its repeal, in 1842.² Several years later, during Pierce's administration, the idea was again taken up, but was handled so roughly by Guthrie,³ then Secretary of the Treasury, that it was abandoned, and the experiment has never since been attempted.

The change in the tariff in 1832 brought with it some additional regulations.

The Act of July 14, 1832, which was not to go into effect until the third of the following March, abolished the long standing custom of adding ten per cent. or twenty per cent. to the cost or value of goods in estimating the duty thereon. Duty less than two hundred dollars⁴ was to be paid in cash without a discount; if it exceeded that sum it might be paid or secured to be paid one-half in three and one-half in six

¹ House Report, No. 943. 27th Congress, 2d Session.

² Bolles in his Financial History makes a misstatement here. Cf. *supra*, p. 37, note.

³ Report of Secretary of Treasury, 1856.

⁴ The law had heretofore placed fifty dollars as the limit.

months,¹ an exception being made in case of woolen goods.² This was a very much needed reform, as the terms of credit had heretofore varied greatly on different classes of goods, thus without any reason favoring some imports much more than others and resulting in manifold useless and expensive complications. The time allowed on bonds had, up to this time, varied all the way from three months to two years, according to the nature of the merchandise and the country whence it was imported.³ These changes, which on the whole considerably shortened credits, aroused, as was natural, a great deal of opposition among importers.

This same law (§ 8) made it lawful for the appraisers to summon any person and examine him on any matter which they deemed relevant to the determination of the value of any merchandise imported, to require him to produce any letters, accounts or invoices relating to the same; and if the person so required should fail to attend or refuse to answer, he was subject to a fine of fifty dollars. In case he was the owner the appraisement was to be final. The duty was imposed upon the Secretary of the Treasury, of establishing such rules and regulations not inconsistent with the laws, as the President

¹ Section 27 of the law of March 1, 1823, provided that where the duty was paid in cash a discount was to be allowed at the rate of four per cent. per annum, for the legal term of credit allowed on those duties.

² See *infra*, pp. 50-51.

³ The terms had been for duties on the produce of the West Indies (except salt), or of places north of the equator and situated on the eastern shores of America, one-half in six months and one-half in nine months; on salt nine months; on wines twelve months: on all goods imported from Europe (other than salt, wines and teas), one-third in eight months, one-third in ten months, and one-third in twelve months: on all goods (other than salt, wines and teas), imported from places other than Europe and the West Indies, one-third in eight months, one-third in twelve months, and one-third in eighteen months: on teas, stored as security two years, when delivered for consumption, the duties not less than \$100 in four months; between \$100 and \$500 in eight months; over \$500 in twelve months; but not in any case to extend beyond the two years allowed: on wines and spirits stored for delivery, the same credit on delivery as if not stored, not to exceed twelve months.

should think proper to secure "a just, faithful and impartial appraisal of all goods." This provision placed in the revised statutes (§ 2949), remains to-day the basis for the Secretary's regulations.

By this same act (March 2, 1833) the jurisdiction of the circuit courts of the United States was extended to all cases in law or equity arising under the revenue laws of the United States, for which other provisions had not already been made by law; and when any action was commenced in a state court against any government officer or other person for or on account of any act done under the revenue laws, such action might be removed to the circuit court on petition of the defendant. The necessity of this provision is plainly evident, and it is strange that it was not sooner enacted.

4. Payment of Duties in Cash.

In the frequent changes of the tariff during these years of agitation it was noticed that owing to the terms of credit allowed on all imports the direct effect of any change in rates was not felt at once in the revenues; but the government was forced to wait till the maturing of the bonds given on the importations under any new schedule. It was thus utterly impossible for the government to meet promptly any sudden demand for increased revenues. The effect of any law was postponed and obscured, so that its real result could not be immediately or even eventually determined with accuracy. It was thought necessary to adopt some system whereby the public income could be made to respond more quickly to public enactments.

To accomplish this a law of this same date, (March 2, 1833,) provided that all duties should be paid in ready money; but like all the tariff laws of this period, it was a compromise, and was not to take effect until after June 30, 1842.

In support of this provision, the similar practice of European nations was cited, and it was claimed, and with considerable basis of fact, that the credit system fostered dangerous specu-

lation which not only was injurious to the people, but jeopardized the revenue.¹ It would have been far more advantageous for the government had this law been allowed to go into immediate operation. For many importers failed in the crash of 1837, and through the non-payment of their bonds in connection with the suspension of importation resulting from the hard times the government found itself in sore need of money. Indeed, the great fault in the credit system was not that it delayed the receipt of the revenue,—the warehousing system does that,—nor that it so greatly fostered speculation—for that was due mainly to other causes,—but that it endangered the revenue by compelling the government to accept inadequate security, and gave the importers credit from the government, which should have been sought from individuals. It is a rather remarkable testimony to the honesty of importers, that up to 1830, of the \$781,000,000 to that time secured for duties under the old credit system, the whole loss was less than \$6,000,000.²

5. *The "Similitude Section" and the Warehouse System.*

The next important tariff act was that of August 30, 1842, which in its treatment of collection problems was somewhat reactionary, as a result probably of a change in administrations and of secretaries. It reimposed the old ten per cent. discrimination against goods imported from beyond the Cape of Good Hope, but with the added clause, "in foreign vessels." The dutiable valuation (§ 16) was fixed as the "market value or wholesale price" of the goods "at the time when purchased in the principal markets of the country from which the same shall have been imported," to which should be added all costs

¹ Essay on the Warehousing System and the Government Credits, Phila., 1828. We must remember in estimating the effect of credits, that this was a time of widespread speculation in all lines, as a result of the changed financial policy of this country, and it may be doubted whether it was any more prevalent in the import-business than in most others.

² See Finance Report for 1831, Vol. III., p. 235.

and charges except insurance and including in every case a charge for commissions at the usual rates. Unfinished goods were to be taken and estimated as of the same value as they would have been if entirely finished at the time when purchased and at the place whence imported.

Where the importer was dissatisfied with the appraisement, upon notice given forthwith in writing of such dissatisfaction the collector should appoint two "discreet and experienced merchants, residents of the United States, and familiar with the character and value of the goods in question" to examine and appraise the same. If they should disagree "the collector should decide between them,"¹ and the appraisement should be taken as final.

The provision of the former law, imposing a fine of fifty per cent. if the appraised value exceeded the invoiced value by ten per cent. or more, was reenacted with the omission of the former exception in case the invoice were *bona fide*, and the addition of a fine of five thousand dollars for each false invoice. The collector was required to designate at least one package out of every ten to be opened and examined, thus increasing the requirement, which at first was one in fifty, then one in twenty, finally fixing it at its present point.² Forfeiture in case fraud was discovered was, as in the former act, again the penalty; but the Secretary of the Treasury, on the production of satisfactory evidence of innocence, might remit it. It was also

¹ From this time on until the passage of the late act, this provision that the collector "should decide between them" has been retained, though the form of the board of reappraisements was changed from time to time. It has been the subject of various interpretations which would create widely different results—the instructions of the Department for 1874 [Art. 427], being that the appraisers should make separate reports, one or the other of which the collector should adopt; but a fairer and more just rule was laid down in the General Treasury Regulations of 1884, Art. 470, which declared that the collector was not bound to adopt one or the other of the values fixed in the reports, but might determine the values as he thought just upon the testimony submitted.

² Subsequently (Act of July 28, 1866) he might designate a less number in certain cases where he deemed it sufficient to amply protect the revenue.

stipulated that in case a package was found to contain a less amount than that at which it was invoiced, an allowance for the same should be made in estimating the duties. Indecent prints and paintings entered might be proceeded against, seized and destroyed (§ 28).

In this act there first appears the much abused, much controverted and much litigated "similitude section." Its substance was that there should be levied on each non-enumerated article which bears a similitude, either in material, quality, texture or use, to any enumerated article, the same rate of duty levied on that article; if it resembles two or more, the highest rate applicable: and on "all articles manufactured from two or more materials, the duty should be assessed at the highest rates at which any of its component parts may be chargeable."

This section has given rise to great perplexities, and has been productive of manifold rulings by officials and courts. It is natural, and indeed indispensable, that the local customs officers should give the government the benefit of the doubt in all cases of doubtful classification,¹ not only because the collector is responsible for levying and collecting the full rate of duty, but in order to protect the revenue. For if less than the full rate is collected the security is apt to pass out of the hands of the collector before the error is corrected by the Department. Of course the effect of this is to hasten the settlement of mooted questions. But its further effect is to multiply suits upon the same question.

¹ In the case of *Adams vs. Bancroft*, 3 Sumner, 387, Mr. Justice Story announced that laws imposing duties are never construed beyond the natural import of the language, and duties are never imposed upon doubtful interpretation. The same principle was laid down by Mr. Justice Nelson in *Powers vs. Booney*, 3 Blatchford, 203, in which he said "that in cases of serious ambiguity in the language of the act or doubtful classification of articles, the construction is to be in favor of the importer;" and this has been adopted as the rule to govern their decisions by several Secretaries of the Treasury. In the trial of suits to overthrow the decision of the Department, the Supreme Court holds the presumption to be that the decision was correct, and the burden of disproving it is thrown upon the importer.

The great change that was made at this time (June 30, 1842), according to the Act of 1833, was the abolition of credits and the substitution of cash payments therefor. Its effect was immediately felt in the value of imports, but more especially in the great diminution of the amount of dutiable goods exported. In the three years following 1842, the amount thus exported was valued at only \$12,590,811, being far less than in any prior three years (except during the war) since 1793, and less than in many single years immediately preceding. This marked falling off, and the intense opposition aroused among the importers to the cash payment system, again brought into prominence the idea of establishing a warehouse system, which had been more or less advocated ever since the favorable report of the Ways and Means committee in 1834. Up to this time storage had been allowed in the case of some classes of goods, but there had been no warehouse system by which payment of duties might be postponed until the goods were needed for consumption.

The Act of 1789 permitted the deposit of goods of double the value of the duties due to be made as security for their payment; in default of final payment the goods were to be sold. Of course this was intended in no sense as government storage, its object being merely to secure the revenue. The Act of 1799 permitted the importer of teas from China or Europe to deposit the imported tea for two years, at his own charge and risk, in a storehouse to be agreed upon by the importer and the inspector, the importer meantime to furnish his bond in double the amount of the duties on the tea imported. Though this was felt to be an unreasonable discrimination and elicited much criticism, it was not finally repealed until the Act of July 14, 1832. Previous to this—April 20, 1818,—a similar privilege was extended to importers of wines and distilled spirits, the term allowed for payment being shortened to one year.

This same act—July 14, 1832—allowed importers of wool or manufacturers of wool or of products of which wool was a

component part, to pay the duties in cash, or at their option to place the goods in the public stores, under bond, at their own risk and subject to the payment of the customary storage charges and to the payment of interest at the rate of six per cent. per annum, while stored, the duties to be paid one half in three months and one-half in six months. If any instalment were not paid when due, so much of the goods as was necessary might be sold to meet it. The act of August 30, 1842, as has been pointed out, required that all duties be paid in cash, and in case of neglect so to do on the completion of the entry the collector might place such goods in the public stores, at the owner's charge and risk; and at the end of sixty days (ninety days if from beyond the Cape of Good Hope)¹ such quantity of the goods as should be deemed sufficient to meet the charges were to be appraised and sold by the collector at public auction.

This was the state of things when Robert J. Walker, in his first annual report as Secretary of the Treasury, strongly urged upon Congress the advisability of establishing a warehouse system; and on August 6, 1846, the act for that purpose was approved. It was based in some measure upon the English statute of 1833,² but left the details largely for the regulation of the Secretary of the Treasury. It permitted warehousing, at the charge and risk of the owner, of all goods (except those of a perishable character) for the period of one year,³ the duties thereon⁴ to be secured by the bond of the owner with surety in double their amount; the goods or a part of them to be at

¹ The period was lengthened by the act of July 30, 1846, to one year for all goods.

² 3 and 4 William IV. One of a series of English acts said to have been founded upon the system of Holland. See Dowell's History of Taxation in England. Index Vol. II, *Sub verbo* Warehouse.

³ Increased to two years in case of exportation March 3, 1849, and to three years by act of 1854; again reduced during the war, but successively raised since, and by the act of 1890 again fixed at three years.

⁴ To be estimated on entry for warehousing.

all times subject to withdrawal upon payment of the duties and other charges upon them.

Walker was an enthusiastic admirer of the English system, and by his instructions and rules regulated all matters left to his discretion in strict conformity to the English law.¹ He went very far in this and, through a somewhat strained construction of the clause giving him wide discretionary powers, introduced the system of *private* bonded warehouses, which was subsequently confirmed by the act of March 28, 1854, and has ever since remained in force.² Under it, as extended by this later act, goods might be deposited either in the public stores, owned or leased by the United States, in the private warehouse of the importer, used exclusively for this purpose, or in a private warehouse used exclusively as a general warehouse for the storage of warehoused goods—the place of deposit being mentioned on the entry. Such private warehouses were to be previously approved by the Secretary of the Treasury³ and placed in charge of a government officer. All labor on the stored goods must be performed under the supervision of the officer and at the expense of the owner. The owner was further required to enter into a bond in such a sum and with such sureties as should be approved by the Secretary of the Treasury, to hold the United States and its officers harmless from any risk, loss or expense connected with the

¹ Report of February 22, 1849.

² The act of July 14, 1832, which was not to go into immediate effect, in order to give merchants importing goods between the time of its passage and the date set for its enforcement the advantage of the lower duties, allowed the deposit, under bond, of the goods imported up to that date in the public stores. An act supplemental to this, passed March 2, 1833, authorized the collector, as a temporary provision where the quantity of the merchandise exceeded ten packages, to allow it to remain in the warehouse of the owner if he considered the same a safe place of deposit; an officer of the customs to be placed in charge and to "keep them under the keys of the custom house." This is the first mention of private warehousing in our statutes.

³ Held to be a privilege and not a right. The Secretary may refuse if he choose to declare a warehouse a bonded warehouse. 3 Blatchford, 113.

deposit of goods therein. Goods, by act of 1854, might remain in the warehouse three years, and at any time within that period might be withdrawn, without payment of duties, for exportation if entered for exportation, or on payment of duties for consumption if entered for consumption. No abatement or allowance was made for damage, loss or leakage, except in case of fire or other casualty and upon satisfactory proof thereof to the Secretary of Treasury.¹

Goods might also be withdrawn for rewarehousing elsewhere, in which case a bond was required stipulating the time and place of delivery, the transportation to be over a route approved by the Secretary of the Treasury; failure to transport and deliver within the time specified was to subject the goods to an additional duty of one hundred per cent.,² and the vessel or vehicle transporting the same to seizure and forfeiture.

In this same year, July 30, 1846, a law was passed reducing the old penalty of fifty per cent. in case an appraisal added ten per cent. or upwards to the invoice value, to its present ratio of twenty per cent. The importer was also allowed to add such sum to the invoice on entry as he might deem sufficient to raise the goods to their actual market value. As originally drafted the ninth section of this act provided for a substantial adoption of the European plan for the prevention of undervaluation.³ It gave the collector power, upon suspicion of fraud

¹ Heretofore the only redress in such cases was by special act of Congress, but applications became very numerous, and Congress is a clumsy and unreliable reliever of private grievances; it goes too far when it does act, but more frequently does not act at all. There had constantly been appeals to Congress for remission of fines and penalties and even duties, and each new tariff brought a fresh batch of grievances because of inequalities or injustice arising out of the change of the old law or incident to putting the new one into operation, especially the act of May 29, 1830. Indeed, importers seemed to have fallen into the habit of running to Congress continually for relief.

² Explained by § 20 of the act of July 14, 1862, to mean double the duties to which the goods would have been liable on the original entry. Statutes at Large, Vol. IX., p. 43.

³ French Law, 4 floréal, an IV., Law July 2, 1836; German Law of 1869,

and with the sanction of the Secretary of the Treasury, to seize the suspected goods and sell them within twenty days at auction in the manner prescribed by law for the sale of unclaimed goods, the receipts to go into the treasury, and the importer to be given a sum equal to one hundred and five per cent. of the invoice entry. This provision was stricken out on motion of Webster.

The appropriateness of such a remedy to a system of *ad valorem* duties cannot be judged from its use among the nations of Europe, whose tariff rates are in general specific. Even under a system of specific duties it is apt to do injustice to the importer, and to be of little advantage to the government. Its non-adoption with us is hardly to be deplored.

6. The Administrative Remedy by Appeal to the Secretary of the Treasury.

Up to this time collectors were allowed to retain certain amounts to meet suits brought against them in their official capacity. The salaries of officers were supposed to be paid out of the moneys received from fees. But for some time, where the fees were inadequate, they had been paid directly out of the revenue. This practice was abolished in 1843.

On March 3, 1839, Congress passed an act requiring that "the gross amount of all duties received from customs and from all miscellaneous sources for the use of the United States shall be paid by the officer or agent receiving the same into the treasury of the United States at as early a day as practicable, without any abatement or deduction on account of salaries, fees, costs, charges, expenses or claims of any description whatever." The Secretary of the Treasury was to submit to Congress his estimate of necessary expenses of collecting the revenue, which were to be met out of the appropriation made therefor. These expenses were limited to \$1,560,000 per

Bundesgesetzblatt 1869, p. 317, § 93; Cf. Political Science Quarterly, Vol. I., p. 40: The Collection of Duties in the United States, by Professor Goodnow.

annum, together with such sums as were paid under the law into the treasury for drayage, labor and storage.¹

This law further provided that if an importer should be dissatisfied with the decision of the collector as to the amount of duties, and should prove to the Secretary of the Treasury that more money had been paid to the collector than was required by law, the Secretary should draw his warrant in favor of the importer. This is the first instance of an administrative appeal from the decision of the collector [as to rate and amount] to the Secretary of the Treasury. After this law was passed, when a suit was brought against the collector in the old way, the court held that no suit would lie.²

Such a remedy appeared insufficient to Congress, which in 1845³ repealed the law of 1839 in so far as it gave an administrative remedy by appeal to the Secretary, expressly permitted suit to be brought against the collector, and provided that the government should pay all such judgments obtained against collectors. By the act of March 3, 1857, Congress re-established the administrative remedy originally provided in 1839, in addition to the judicial remedy provided by the act of 1845. By this act it was provided that, in case the importer was dissatisfied with the decision of a collector as to the liability of goods to pay duty or their exemption therefrom, he might, on giving notice in writing of his objections to the collector within ten days after the entry, setting forth distinctly and specifically the grounds, appeal within thirty days from the date of the decision to the Secretary of the Treasury, whose decision should be final, unless suit for the duties was brought against the collector within thirty days thereafter.⁴

¹ In 1850 \$1,000,000 was appropriated for general expenses, besides \$225,000 for specific purposes. At present the regular annual appropriation for many years has been fixed at \$5,500,000, with usually a large deficiency allowance.

² *Cary v. Curtis*, 3 How., 236.

³ 5 Statutes at Large, 727.

⁴ The act of June 30, 1864, extended the period for appeal to the courts to 90 days. The wording of this statute was more comprehensive, including as matters of appeal, rates and amounts of duties, fees, charges and exactions of whatever character.

In 1851¹ the law of appraisement which since its original establishment in 1823 had been modified, among other years, in 1828, 1830, 1832 and 1842, was again taken up and the President was authorized to appoint four "appraisers of merchandise" [general appraisers], to be allowed a salary of two thousand five hundred dollars yearly, together with actual traveling expenses, who should visit such ports as the Secretary of the Treasury might direct, and give such aid as he should think necessary. In case of appeal from the regular appraisers, the collector should select one discreet and experienced merchant to be associated with one of these appraisers, who, together, should appraise the goods, in the manner prescribed by the law of August 13, 1842. A professional element was thus introduced into the board of reappraisement, removing it still further from any influence of the importer. The merchant appraiser was to be appointed by the collector, thus retaining the principle adopted in 1842,² when the power of reappraisement was for the first time placed in a body in the selection of which the importer had no voice.

¹ March 3, 2d Session, 31st Congress, Chapter 39.

² See *supra*, p. 48.

CHAPTER IV.

TARIFF ADMINISTRATION FROM THE CIVIL WAR TO 1890.

1. Attack on the Warehouse System.

THE enormous increase in the tariff rendered necessary by the war, the high *ad valorem* rates and taxation of almost all imports, held out great allurements and high rewards for frauds upon the revenue. Stringent measures for the prevention and detection of these frauds were recognized as needful, and were enacted. Between March 1, 1861, and March 4, 1873, there were passed fourteen principal statutes relating to classification and rates, besides twenty other acts or resolutions modifying or affecting tariff acts.

The law of March 2, 1861,¹ provided that the value on which duties should be estimated should be that on the "day of actual shipment," as shown by the bill of lading, certified to by a United States consul or commercial agent.

At this time a severe attack was made on the warehouse system, as merely another method of giving credit on imports. But it was ably defended by Mr. Hunter, chairman of the Finance Committee, who declared that it was not a credit extended by the government, but was merely giving our merchants the advantage of storing on this side instead of on the other, and making our cities (instead of foreign ports)² the great storehouses of the country's goods. Indeed it is hard to combat the justice of an arrangement which at no risk or expense

¹ 36th Congress, Session II., Chapter 68.

² The great reason for adopting this system at the time of its establishment was to facilitate the re-exportation of dutiable goods, but neither at the time nor subsequently has the storage of goods to be re-exported been its chief function.

to the government, delays the payment of duties until the goods pass into actual use. However, the system had then, and has still more so now, become so firmly established as to safely be regarded a permanent feature of our customs machinery. Nevertheless this bill as originally passed by the House of Representatives required that duties be paid within one month from the time of entry, and that all goods in warehouses pay cash within thirty days from the passage of the bill.¹ This harsh provision was modified in committee; and as subsequently passed allowed goods to be warehoused for three months, and postponed the operations of that clause for four months. At the same time there was a strong contest over the relative merits of *ad valorem* and specific duties,² as a result of which there was in many cases a return to specific rates where the extreme development of the *ad valorem* principle in 1846 had applied that form of assessing duties.

The act of July 14, 1862,³ which slightly modified the requirement of consular verification, extending it to all goods, whether subject to *ad valorem* duty or not, imposed upon the consuls the duty of reporting any suspicious or fraudulent acts of foreign consignors. It also changed the provisions for storage, lengthening the time for payment of duties on warehoused goods to one year and allowing the goods to remain for three years; if left longer they were to be deemed abandoned. It was further provided that on all goods exported within those three years ninety-nine per cent. of the duties already paid should be returned.⁴

¹ There were probably from fifty to sixty million dollars worth of goods in warehouses at that time, and from ten to twelve million dollars of duties due thereon—the passage of this provision would have precipitated a financial crisis among importers.

² Any one in search of remarkable displays of Congressional mastery of administrative problems should read the vigorous arguments of this date, to prove that an *ad valorem* tax is easier and cheaper to collect and less capable of being avoided than a specific tax.

³ 37th Congress, Session II., Chapter 163.

⁴ Act of August 5, 1861, fixed the drawback at ninety per cent. of the duties paid. 37th Congress, Session I., Chapter. 45.

2. *Triplicate Invoices.*

On March 3, 1863,¹ the President approved the most stringent measure ever applied in our service to the purpose declared by its title, viz, "to prevent and punish frauds upon the revenue," *etc.* It provided that after the succeeding July all invoices of goods should be made in triplicate and should have inclosed thereon a declaration² signed by the owner, purchaser, manufacturer or agent, setting forth the price or cost and time and place of purchase or manufacture, about as prescribed by the previous laws. These invoices should be produced to the consular officer nearest the place of shipment, and the owner, importer or agent, *etc.*, should then declare to the said consul, vice-consul or commercial agent, the port at which it was intended to make entry of the goods. Thereupon the consular officer was to endorse upon each of the triplicates a certificate stating that the invoice on that date had been produced to him, the name of the person producing it, and the port in the United States where entry was intended to be made.³ This officer was to give one of the triplicates to the person producing them, to be used in making entry; he was to file and preserve one in his office; and speedily transmit the third to the collector of the port designated as the intended port of entry.⁴ Goods should not be admitted to entry unless the invoice conformed to these requirements.

¹ 37th Congress, Session II., Chapter 76.

² Heretofore, by the law of 1823, this must be sworn to, but by this the simple declaration was sufficient. But the law of March 3, 1865, allowed the consular officers to require "satisfactory evidence either by oath * * or otherwise that such invoices were correct and true," and they were instructed by the Secretary of State to do this, "whenever they deemed it expedient," by examining under oath any person whose statements would be of value "upon any matters" germane to the subject of inquiry.

³ This is the consular authentication as distinct from the owner's verification.

⁴ If goods arrived before the receipt by the collector of his triplicate, they might be entered, on bond of double the apparent amount of duties being given, to await the arrival of the triplicate or a certified copy thereof.

For entry under a false invoice or certificate the goods or their value should be forfeited, the penalty to be divided as other forfeitures were. The Solicitor of the Treasury¹ was required to look after all frauds and attempted frauds upon the revenue. Frauds were punishable by imprisonment for a term not to exceed two years, and by a fine of not more than five thousand dollars. The punishment also included removal from office in case a customs officer was implicated. It was made the duty of the district attorney, by § 13, to defend all suits brought against collectors or other officers of the revenue for their official acts.

Up to this date the chief officer of any port or his appointee on getting a warrant therefor from a justice of the peace, might, enter any private premises not unreasonably remote from the coast, search for and seize any goods on which all the duties had not been paid, and examine and remove for inspection any books or papers containing information with regard to such goods.² The act of 1863 (§ 7) placed this power in the hands of the United States District Judge, who was authorized to issue such a warrant to the collector only upon proof by affidavit to his satisfaction that fraud had been actually committed or attempted. The invoices, books or papers so seized were to be retained by the officer seizing them, subject to the control and direction of the Solicitor of the Treasury.

This dangerous power was subsequently further restricted on July 18, 1866, and March 2, 1867.³ According to these laws the warrant was directed to the United States District Marshal instead of to the collector, and the papers were to be subject to the disposition of the court instead of the Solicitor of the Treasury.

¹ This office was established by the law of May 29, 1830.

² § 68 of the law of 1799.

³ 39th Congress Session II., Chapter 188. This act provided for the distribution of fines and penalties, giving carriers a lien for freight which could be enforced before the release of the debtor's goods from the warehouse, when previous notice had been given to the collector.

3. *Dutiable Value.*

The increase in duties in 1864¹ was accompanied by slight changes in the collection laws. The method of determining the dutiable value was again defined, this time as² "the actual value of such goods on shipboard at the last place of shipment to the United States," and was to be ascertained by adding to "the value of such goods, at the place of growth or manufacture, the cost of transportation, shipment, trans-shipment, with all expenses included, the value of the sack, box, or covering of any kind, commissions at the usual rate, in no case less than two and a half per cent., brokerage and export duties, together with all costs and charges." This finally settled a moot point in the law of 1851 (March 3), and put an end to the contention on which, up to that time, over fourteen hundred suits had been brought against the collector at New York, viz., that under the former law no account should be taken of commissions and certain charges.³

The last section of this act allowed baggage or personal effects arriving in the United States in transit for a foreign country to be deposited with the collector, to be retained and delivered by him to the parties having it in charge on their

¹ June 30, 1864, 38th Congress Session I., Chapter 171.

² Over this there was a difference of opinion and on its substantial reenactment in 1866 there was a sharp contest; in the Senate Mr. Sherman attacked it as bearing too heavily on bulky goods, and introducing so many elements into the estimated cost as to render it uncertain, thus giving rise to frauds and perhaps inequality.

Mr. Edmunds on the other hand upheld it, saying that all tariffs were based on home value, and that these were its necessary elements. On the vote it was stricken out; but as the House did not agree, it was retained in the above form.

³ Under the law of 1851 the Secretary of the Treasury had made a ruling that certain charges, including commissions at two and a half per cent., should be items in estimating dutiable value. This caused a vast amount of litigation, and many of these cases, commonly called the "charges and commissions cases," remained pending down through the seventies. The government was compelled to pay out several millions in judgments—the items of interest and costs forming a large proportion of the total amount.

departure for their foreign destination, under such rules as the Secretary of the Treasury might prescribe.

4. *Appraisement at New York.*

On July 27, 1866, the matter of appraisement at the port of New York,¹ was again taken up, and as fixed by this law has remained substantially the system of appraisement at that port to this day.²

In lieu of the appraisers formerly stationed there, the president was authorized to appoint one appraiser who had had experience as such, and with the same qualifications heretofore required of the several appraisers.³ This officer was to have supervision of examinations, inspection and appraisements. Under him were to be not exceeding ten assistant appraisers, appointed by the Secretary of the Treasury, and with qualifications similar to those required of the appraiser. Their report, approved by the appraiser, was to be regarded as the legal appraisement.⁴

In lieu of the clerks at this time employed in the examination of goods, the Secretary of the Treasury was to appoint, on nomination of the appraiser, such number of examiners as he might determine to be necessary. These examiners were to be "practically and thoroughly acquainted with the character, quality and value" of the articles in the examination of which they were employed. Their compensation was not to exceed two thousand five hundred dollars yearly.⁵

The Secretary was also to appoint, on nomination of the appraiser, the clerks, verifiers, samplers, openers, packers and

¹ 39th Congress, Session I., Chapter 284.

² Other ports are governed in this matter by various statutes, but the main facts of the system excepting the names of officers are practically the same.

³ See *supra*, pp. 34 and 42.

⁴ Their duties were apportioned among them, each having a particular department, as special examiner of drugs, appraiser of damaged goods, *etc.*

⁵ The appraiser's salary was fixed at \$4,000, and that of the assistant appraisers at \$3,000 each.

messengers employed in the appraiser's office, and to fix their number and compensation. The old laws as to the manner of valuation and appraisement were to apply as before.

5. *Transportation in Bond.*

The act of July 28, of this same year,¹ authorized the Secretary of the Treasury to appoint certain ports at which goods destined for Canada or Mexico might be entered and transported in bond to their destination through the territory of the United States, under such regulations as might be prescribed. Goods subject to duty might also be transported across the territories of those countries, with the consent of the proper authorities, in transit from one place in the United States to another, over such routes and under such regulations as the Secretary should prescribe.

The law of July 14, 1870,² farther perfected this system of bonded transportation. According to its provisions goods destined for certain interior points—about one to each state—when entered at specified ports, and after they had been sufficiently examined [without removal to warehouse or appraiser's office] in order to roughly verify the invoice, might be immediately shipped to their destination, provided a bond be given, with at least two sureties, for double the invoice value of the merchandise with the duties added. The formal entry, appraisement and payment of duties could then take place at the place of final distribution.³ Such merchandise should be delivered only to common carriers designated by the Secretary of the Treasury, who were to give such bonds and in such amounts as the Secretary might require, and who were to be responsible for the safe delivery of the goods to the collector at the port of destination. The goods while in transit were not to be unladen or trans-shipped, but should be conveyed in cars,

¹ 39th Congress, Session I., Chapter 298.

² 41st Congress, Session II., Chapter 225.

³ Amended, but very slightly changed, by Act of July 2, 1884, 48th Congress, Session I, Chapter 142.

vessels or vehicles securely fastened with locks or seals under the exclusive control of the officers of the customs.¹ For greater safety inspectors might be placed at proper points along the routes, or upon the trains or cars, at the expense of the respective companies.²

6 *Special Agents and General Orders.*

On May 11, 1870,³ Congress passed the first law distinctly authorizing the appointment of special agents of the Treasury to be employed in the customs service. The act limited the number to be appointed to fifty-two, and divided them into three classes, with salaries running from eight dollars down to five dollars a day.⁴ Already at this time there were some fifty-one such agents receiving salaries—besides expenses and mileage—from five thousand dollars down. Under what authority these men were employed is not exactly clear,⁵ but the custom of appointing them seems to have obtained almost from the establishment of the government.

The influence of special agents on the department and on the development of the system is hard to estimate. It is principally through them that the Secretary comes in contact with the local service. Some such officers are absolutely necessary for the efficiency of the system; and the Secretaries unite in declaring them indispensable to the proper supervision of the local officers. They certainly have had a great influence in cen-

¹ Any person breaking the locks or seals, or in any way gaining access to the goods with the intent of unlawfully removing them, may be imprisoned for not less than six months nor more than two years.

² By the treaty of March 1, 1873, a like privilege of exporting goods through the United States was given to Canada.

³ 41st Congress, Session II., Chapter 98.

⁴ The maximum number allowed was subsequently [August 15, 1876] reduced to 20, and again [June 19, 1878] raised to 28, where the limit remains to-day.

⁵ The only ground on which their appointment could be legally justified would be that implied from the twenty-first section of the law of 1799, that collectors, naval officers, *etc.*, should "at all times submit their books, papers and accounts to the inspection of such persons as might be appointed for that purpose."

tralizing the customs administration, and through them the actions of collectors have been subjected to a strict central administrative control.¹

Attention had been called to these agents by the extravagant sums paid them and by their marked inefficiency. In other words, the office had got into politics. Attention was not confined to this branch of the service alone. Investigating committees were appointed, and during the next few years the management of the New York custom house for several administrations past was examined without bringing great credit upon any one connected with it. One of the great fields for extortion from importers had been the "general order business" as it was called. In order to facilitate the sailing of vessels making regular trips, the law had long allowed them to make application to the collector, who would thereupon issue a general order that after five days all goods on board should be landed and taken into the possession of the custom house officials. This period was shortened in 1854 to three days, and in 1861 to a single day. As the time allowed to remove goods became shorter, the amount left to be taken to the government "general order stores" greatly increased. The importers were compelled to pay the charges for storage and cartage from the vessel to the stores. As the treasury regulations with regard to the matter were very loose, the management of this business was left largely to the collector. He farmed out the general order business in such a manner that the importers were subjected to exorbitant charges and poor accommodations. Monopolies such as the cartage bureau were created, which though licensed by the collector were allowed to demand inordinately high pay for services which the importers were bound to accept.² This, perhaps, was much more a fault in the service than in the system.

¹ See report of Secretary Manning on Collection of Duties, 1885, p. 38.

² House Report, No. 30, 39th Congress, Session II.; Senate Report, No. 227, 42d Congress, Session II.; Senate Report, No. 380, 41st Congress, Session III.

By the twenty-fourth section this great source of scandal—the general order business—was put into the hands of the Secretary of the Treasury, together with the control and regulation of the bonded warehouses. The officers of the customs were forbidden to have any personal ownership of or interest in either the bonded warehouses or the general order stores. The cartage of merchandise was to be let under regulations approved by the Secretary of the Treasury to the lowest responsible bidder who might give sufficient security.

7. Searches and Seizures.

The provision of the old law which had allowed the entry into private premises on a warrant, and the seizure of private books and papers for the purpose of obtaining information on which to bring suit of frauds intended or accomplished, was totally abolished. In lieu of the similar provision in case of suits already begun, it was provided that after suits for forfeiture had been actually commenced, the attorney for the government might make a written motion describing the desired book, paper or invoice, and setting forth the allegations that he expected to prove; and thereupon the court in which the suit or proceeding was pending might at its discretion issue a notice to the defendant or claimant to produce the desired document at a day and hour prescribed in the notice. This notice was to be duly served by a United States Marshal, and if the defendant or claimant failed to produce the document, or to explain his failure satisfactorily, the allegation stated in the motion should be taken as confessed. If the document were produced, the government attorney should be permitted to examine it and offer the same in evidence. But the document should remain in the custody of the owner or his agent, subject to the order of the court. This entirely took away the great facilities formerly offered for obtaining evidence in the preparation of a suit, and greatly limited the opportunity for procuring evidence during the prosecution of the suit. Previous to 1874, by the law of 1799, in suits brought for violation of

any provision of the customs revenue laws, if a probable cause for such prosecution was shown to the court, the burden of proof in establishing the innocence of the act was upon the party defendant. But by this law, the questions whether the alleged acts were done with the actual intent to defraud the United States were to be passed upon by the court or jury as a separate finding of fact. And unless intent to defraud should be found no fine, penalty or forfeiture was to be imposed.¹ This law was also interpreted² to cover the whole ground of frauds on the revenue, and to do away with the action formerly allowed for the value of goods tainted with fraud, but which had been withdrawn from the custody of the government.³

Any person accused of a violation of the customs revenue laws might make a petition to the judge of the district where the violation occurred, setting forth the facts of the case and praying relief. The judge might thereupon, if the case in his judgment required it, fix a time and place at which the collector and district attorney should be notified to attend and show cause why the petition should not be granted. This summary investigation should be held before the judge or a United States Commissioner and the petition with a certified copy of the evidence should be transmitted to the Secretary of the Treasury, who might mitigate or remit the fines and direct the discontinuance of the prosecution as he deemed it just. Suits for the recovery of a fine or penalty must be brought within three years, and whenever duties should have been liquidated and paid, such settlement in the absence of fraud or

¹ Section 4 of the act of May 28, 1830, required that in order to obtain a verdict for the government, it must be found that the invoices were made with intent to defraud the government. Section 1 of the act of March 3, 1863, required that in order to obtain such a verdict it must be found that the false invoice or other paper was made knowingly. But the Supreme Court still held (3 Wallace 114), that it was thrown on the claimant of the goods seized to dispel the suspicion, and to explain the circumstances which indicated that there had been knowing under-valuation.

² 19 Federal Reporter, p. 893.

³ This section was repealed by act of 1890.

protest by the importer should be conclusive after the expiration of one year. In case of fraud in the invoices, only the package containing the merchandise to which the fraud related should be forfeited.

8. *Compensation of Customs Officers.*

This act, also, partially inaugurated a much needed reform in the manner of compensating officers. At the time of the establishment of the system it was thought that the customs service would be practically self-supporting. With this end in view, the act of 1779 laid down a set of fees to be exacted from all who had dealings with the customs service, for the benefit of the customs officers. In addition thereto the officers received only nominal salaries.

These fees, gathered from various sources and for various services, differed slightly in different districts, ranging in amount from ten cents to several dollars, the major portion being in sums of fifty cents and less. The plan was never successful, and the system was at no time self-sustaining. The multitude of small fees, though inadequate in most cases to compensate the officer, yet in busy ports amounted in the aggregate to sums which, in some instances, rewarded the officers beyond all desert. To remedy this, the twenty-third section of this act provided that in lieu of all "salaries, moieties, and perquisites of whatever nature," the collectors, naval officers and surveyors of the principal ports were to receive the fixed salaries named therein.¹ Why the system of salaries was not extended to all ports at this time does not appear. That it should have been so extended has been recognized by all officials familiar with the workings of the law. Action to this effect has been repeatedly recommended by the different Secretaries of the Treasury in their reports to Congress.

¹ Collector of New York, \$12,000; collectors of Boston and Philadelphia, \$8,000; collectors of San Francisco, Baltimore and New Orleans, \$7,000; collector of Portland, Me., \$6,000: the naval officer and surveyor at New York, each \$8,000; naval officer at Boston, San Francisco, and Philadelphia, \$5,000.

These fees were for the most part made up of small and vexatious exactions, difficult to collect, and involving a large amount of unprofitable clerical work in the accounts. They were also uncertain. For instance, the allowance for storage, for which no equivalent service was rendered, might be retained by the collector to the amount of two thousand dollars, if the sum amounted to so much. Under the complicated system of computation adopted, this system opened wide the way for fraud, at least in the smaller districts. Many collectors on the northern, northeastern and northwestern frontiers received more from the sale of blanks to the railway companies¹ than from their salaries. In some instances the income from this source has exceeded the official salary by ten or fifteen thousand dollars. Furthermore, the income to the government from this source is comparatively meagre, being less than a quarter of a million dollars in recent years.

9. Repeal of the Moieties Clause.

About this time the numerous prosecutions of importers for fraud and the immense sums recovered by revenue officers and informers² in these suits, as well as the vigorous and unscrupulous enforcement of the harsh provisions of the law by officers interested in the resulting penalties, raised a general and just clamor for a change in the law.³ The scandals of these proceedings were indeed very great, the hardships upon some innocent importers very severe, while the vexation, annoyance and apprehension of all were deplorable.

The Secretary of Treasury wrote a letter to Congress advocating the abolition of moieties and many fines;⁴ the Con-

¹ Permitted by § 2648 of the Revised Statutes.

² Collectors at New York received from this source: May 1866 to March 1869, \$102,710; April 1869 to July 1870, \$41,304; July 1870 to Nov. 1871, \$55,997; Dec. 1871 to Nov. 1873, \$56,120.

³ House Report 111, 38th Congress, Session I. History of Proceedings in the case of Phelps, Dodge & Co. Miscellaneous Document No. 264, 43d Congress, Session I. House Report No. 30, 39th Congress, Session II.

⁴ Executive Document No. 283, 41st Congress, Session II.

gressional Committees recommended the same action. As a result the law of June 22, 1874, was passed. By it all provisions by which moieties had been allowed were repealed, and the proceeds of all fines, penalties and forfeitures were ordered to be paid into the United States Treasury. In cases of the detection of smuggling, and in such cases only, the informer or officer might be allowed such compensation as the Secretary of the Treasury should award—not to exceed five thousand dollars.

Although the law contained numerous changes, its main object and principal result were the abolition of "moieties," with the view to deter officers from bringing and pressing suits in the hope of obtaining a share in the severe and often disproportionate penalties exacted. The law has more than fulfilled its purpose. It is an open question whether Congress did not go too far in the matter, and by removing all strong personal interest leading persons to undertake the risk and labor of bringing prosecutions, open wide the door to frauds and consequent injustice to the honest importer for whose protection this very law was framed. The falling off in the amount received from fines, penalties and forfeitures was immediate and marked.¹ In the ten years preceding 1874, there had been brought in the Southern District of New York 957 suits or proceedings, on which \$3,696,232.53 were paid into the registry of the court. In the ten years following 1874, 254 suits were begun, and thereon only \$393,774.72 were paid into the registry of the court. Yet during the latter period imports vastly increased; and there is no reason,—indeed the tendency of the law would in effect have been the very opposite,—to believe that under-valuation was any less prevalent. B. H. Bristow, Secretary of the Treasury, in his annual report for the year 1874, deplored the action of Con-

¹ Proceeds from this source paid into the Treasury from 1870–1877: Year ending June 20, 1871, \$952,579.86; 1872, \$674,232.77; 1873, \$1,169,515.38; 1874, (law went into effect June 22), \$651,271.76; 1875, \$228,870.23; 1876, \$183,797.86; 1877, \$146,413.21.

gress in this matter. Ever since that time there has been a continual demand from the Secretaries of the Treasury for more adequate legislation for the prevention of frauds upon the revenue.

10. Repeal of Discrimination against Goods from the Far East.

The Acts of May 4, 1882, and December 23, 1882,¹ repealed the provision of the Act of December 31st, 1862, which levied a discriminating duty of ten per cent. additional upon all goods, wares and merchandise, of the growth or product of the countries east of the Cape of Good Hope, when imported from places west of that Cape. The object of this law had been the fostering of direct commerce with the Orient, carried on in American bottoms. But the opening of the Suez Canal had changed the course of Eastern commerce, which now naturally flowed through this gateway into the European markets. As a consequence, it became much cheaper to bring these goods *viâ* the European ports, and it was often very difficult to determine whether goods purchased in Europe were originally from the East or not. The resulting confusion and uncertainty, with no adequate corresponding benefit, rendered the repeal of the act advisable. We see in this a curious instance of how seemingly independent occurrences may affect our administrative problems.

11. Dutiable Value and Similitude Section under the Act of 1883.

The tariff Act of March 3, 1883² had appended to it several sections governing administrative matters. It contained new and lengthy forms of oaths: first, of the consignee, importer, or agent, to be taken on entry; second, of the owner when the goods had been purchased; and third, of the manufacturer when they had not been purchased. But the forms

¹ 47th Congress, Session I., Chapter 120; 47th Congress, Session II., Chapter 6.

² 47th Congress, Session II, Chapter 121.

added little that had not been contained in, or implied by, the oaths formerly required.

The previous law, which provided that the usual and necessary "sacks, crates, boxes or coverings" be estimated as part of the value of imported goods, was repealed; and such charges were not thereafter to be included, in determining the amount of duties for which goods were liable. As the "duti-able value" of goods was declared by the same act to be their "actual market value," or their actual wholesale price in the condition of finish and preparation for sale in which they were finally offered by the foreign merchant to his customers, and as many kinds of goods were never offered for sale and had no market value except as prepared for shipment with their proper coverings, the question at once arose: At what valuation should these goods be entered for duty? A variance of opinions and practice speedily sprang up. The Treasury Department, under Mr. Folger, ruled that coverings, *etc.*, should be included as forming part of the value of the goods. This decision was subsequently upheld by the court.¹ The decisions and instructions of the Department resulted, however, in a large number of protests and the bringing of many suits.

The "similitude" section of the existing law, originally enacted in 1842, was reënacted in a more elaborate form, and with the added proviso that "non-enumerated articles similar in material and quality and texture and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials shall be used, shall be free." The section, even under a generous interpretation by the Secretary, gave rise to considerable additional litigation. Collectors were still perplexed over the term "market value," in spite of all the defining legislation. Importers who received special goods under consignment even claimed that those goods had no market value. To meet this contention section nine of this act provided that if it should appear that the true and actual

¹ 24 Federal Reporter, 852.

wholesale price could not be ascertained to the satisfaction of the appraiser, it should be lawful to appraise the merchandise by ascertaining the cost or value of the materials composing it at the time and place of manufacture, together with the cost of manufacturing, preparing and putting up for shipment. This ought to have definitely settled the old "no market value" claim; but it was too specious to be given up thus easily, and we find it urged again and again by contesting consignees of dutiable goods.¹

12. Classification of Sugars under the Act of 1883.

Schedule E of the act, relating to sugars, prescribed that the different grades should pay duties according to the Dutch standard of color, to be determined by their "polariscopic test." This was the mere legislative adoption of the form of test already prescribed by the Secretary of the Treasury. On account of the general practice of artificially coloring sugar in order to lower its apparent "Dutch color standard" on which by law it was to pay duty, the Secretary had found it necessary to rule that all sugars be classified by their "natural color," as he called it, that is, by their saccharine strength as determined by the polariscope. The fraud had been very widespread and profitable, and this action of the Secretary naturally gave rise to a great many suits against the government. The government had also brought suit against the importers for fraud. But on account of the great difficulty of proving guilty knowledge as required under the law of 1874, no penalties could be enforced, although fraud was notorious. Sugar was always a very troublesome article to list properly. It seems from the first to have furnished a fruitful field for gigantic frauds upon the revenue. One of the earlier methods which had proved very successful had been the importation of cane juice boiled nearly to

¹ The effect of this clause, if it had any, was found to be an increase in the efforts of manufacturers to conceal the price at which they held their goods abroad and to throw upon the appraisers, few of whom had the requisite skill or experience, the burden of ascertaining the cost of manufacture.

the point of crystallization, or of any solution holding a large amount of sugar, as molasses or syrup, which bore a much lighter duty than sugar. Even since the use of the polariscope, grave and suspicious differences have existed between the tests at different ports.

13. *Passengers' Baggage.*

The law of 1883 again enacted the provision of the former law, exempting from taxation "wearing apparel in actual use and other personal effects," *etc.*¹ The interpretation of this clause has been very liberal,² but is necessarily so indefinite as to give rise to much contention and hard feeling. The examination of passengers' baggage is, from its nature, one of the most troublesome functions of the inspection service. It is the point where the government must go deepest into the private affairs of those with whom it deals; and it is consequently productive of great friction. The wonderful increase in the trans-Atlantic passenger trade, composed in large measure of tourists carrying extensive wardrobes, has added to the difficulties of this service. It has usually been performed on the various steamship wharves, although for a time it was carried on at the barge office in New York. No place is prescribed by law, and in order to expedite matters and to cause as little annoyance and delay as possible to travelers, who would presumably suffer considerable inconvenience if their baggage were long detained, this scattered manner of conducting the

¹ See *supra*, page 30.

² *Astor v. Meritt*, 111 U. S. 202, defined the terms as follows: "Wearing apparel owned by the passenger and in condition to be worn at once without further manufacture; (2) brought with him as a passenger and intended for the use or wear of himself or his family who accompanied him as passengers, and not for sale or purchase, or imported for other persons or to be given away; (3) suitable for the season of year which was immediately approaching at the time of the arrival; (4) not exceeding in quantity, or quality, or value, what the passenger was in the habit of ordinarily providing for himself and his family at that time, and keeping on hand for his and their reasonable wants, in view of their means and habits of life, even though such articles had not been actually worn." By no means an easy thing for the inspector to find out!

inspection has been maintained. On the other hand, it has unquestionably rendered supervision so difficult that in spite of the efforts of the Treasury Department, the practice of bribetaking, or the "acceptance of gifts" by the inspectors from arriving passengers is very general, and produces a very demoralizing effect.

CHAPTER V.

THE McKINLEY ADMINISTRATION BILL OF 1890.

1. General Purposes of the Late Acts.

THE next important measure affecting the customs administration was the Act of June 10, 1890. During the recent discussion of the tariff by Congress, the several bills that were introduced contained in every instance provisions, drafted either directly by the Treasury Department or with its advice and sanction, intended to meet the defects which had been repeatedly pointed out by the different Secretaries in the existing law regulating customs administration.

There were many ambiguities and conflicting provisions in the tariff schedules which had been for many years constant subjects of dispute and litigation; perhaps the most notorious of these was the discrimination between worsteds and woolens. On account of changes in manufacturing processes, these had become so nearly identical in use that the difference in duties on practically the same goods might vary nearly twenty-five per cent., according as they could be put into one class or the other. These matters are not, strictly speaking, administrative questions. But they have such a great bearing upon the ease, economy and exactness of the service, and such a deep influence on the popular temper towards it—since close distinctions breed hard feelings and litigation—that it must be regretted that they are so little considered from this standpoint.

The administrative bill of 1890 was not an attempt to secure a general revision of customs laws and regulations, but merely another patch to the existing piece-work system, consisting of the surviving provisions of hundreds of acts,¹ rulings and

¹ In 1889, Mr. Windom said the laws regulating the collection of duties were

regulations, the result of nearly one hundred years of legislative and administrative activity. Such a body of laws must be unwieldy, disconnected and disproportioned; and a careful and complete codification, reconciling conflicting provisions and ambiguities, would do much towards increasing the ease of executing the law, would serve to point out its defects and gaps, and would at least render it possible to ascertain definitely the exact statements of the law on any point. This would be no small service in the way of diminishing litigation, the amount of which in recent years has been little short of appalling. For a number of years previous to the passage of the last act, suits were brought in the United States circuit court for the southern district of New York on customs questions, at the rate of about fifteen hundred annually, and were disposed of at about one-third that rate; some five thousand cases had accumulated on the calendar, involving, it is estimated, over twenty-five million dollars, with no good prospect of their being disposed of in the next decade. The delay not only injures honest importers, but by throwing the defense of all suits brought under one administration upon the succeeding ones, provokes lax methods, allows the loss of evidence and in the end must result in unjust judgments against the government, in which case the government is compelled to pay heavy costs and interest for a number of years at six per cent. The unnecessary loss involved in this operation may easily be calculated; for the government is able at any time to borrow money at approximately two per cent.

As has been noticed, the earlier acts contained no restrictions as to the size, shape and markings of imported packages, except wine and spirits; gradually others crept in, as those upon tobacco and cigars. The last act went farther than any of its predecessors in so far as it required that unpolished cylinder crown and common window glass, imported

derived from 263 different Acts of Congress, passed during the preceding ninety years.

in boxes, should contain fifty square feet, and that unless all articles of foreign manufacture such as are usually or ordinarily marked, stamped, branded or labelled, and all packages containing such or other imported articles should respectively be so marked, *etc.*, "in legible English words, so as to indicate the country of their origin," they should not be admitted to entry. Provisions of this nature may be of undoubted value and assistance to custom officers, but they are sure to be resented and may amount to a severe hardship upon importers; and, if too much extended, would even constitute a restriction upon trade. Indeed, this last provision, which was to go into effect on March 1, 1891, thus giving nine months' notice, has been found to be so little understood and to work such obvious injustice upon innocent violators, that the Department has ruled that it will not be enforced where the disregard of it has been through excusable ignorance or mistake.

A provision of the old law, which had been found very difficult of interpretation and productive of many protests and suits, required non-enumerated articles manufactured from two or more materials to pay duty at the highest rate that would be chargeable if composed "wholly of the component material of chief value." This was here further explained. The term, "component material of chief value," was defined as "that component material which shall exceed in value any other single component material of the article."¹

2. Increased Stringency of Provisions to Prevent Fraud.

Like former laws, the administrative bill proper² requires consular verification of invoices, to be made out before the

¹ It had been variously contended that this clause should mean the most expensive kind of material used, and as held in the text; further, there had been great doubt as to when that value should be estimated, whether before manufacture, or as found in the article. The latter rule was by this law declared the correct one.

² In treating of the acts of 1890, for convenience, no distinction has been made, except in the references, between the Administrative Act approved June 10 and the Tariff Act approved Oct. 2.

same officers and in practically the same form in triplicate, or in quadruplicate if intended for immediate trans-shipment to interior points. Invoices made out according to the provisions of this act must, as before, be produced on entry; although, as formerly, when the importer makes affidavit showing the reasons accompanied by a statement in the form of an invoice, he may make entry without having a duly certified invoice provided that the collector is satisfied that the failure to produce it is due to causes beyond his control.

This *pro forma* invoice must be verified by the oath of the importer, who may also be examined under oath by the collector as to the sources of his information in the premises, and who may be required to produce any letter, paper or statement of account under his control which may assist the officers in ascertaining the value of the importation. But the great and much-needed change was that merchandise entered on a *pro forma* invoice is subjected to the same conditions, fines, forfeitures, *etc.*, as are imposed in case of entry upon "original" or regularly certified invoices.¹ The three forms of declaration required on entry respectively of the agent, the purchasing owner or the manufacturer, are much the same as those in the law of 1883; except that "value" in each case is defined at length as being the "actual market value or whole-sale price at the time of exportation to the United States, in the principal markets of the country from whence imported, and including the value of all cartons, cases, crates, boxes, sacks and coverings of any kind, and all other charges, and expenses incident to placing said goods in condition, packed ready for shipment to the United States."

Thus the position taken in 1883, of exempting coverings, *etc.*, which had been greatly modified in practice, was definitely abandoned.² The changes in the declarations were made so that

¹ Prior to this the exemption of *pro forma* invoices from these liabilities had been, in the eyes of the customs officers, a temptation to undervaluation not always successfully resisted.

² The peculiar forms of coverings sometimes used since the law of 1883, sug-

they would conform to and harmonize with the requirements in respect to entry. It is further provided by the seventh section that where the appraised value of any merchandise shall exceed its invoice value by more than ten per cent., there shall be levied on such merchandise—not on the whole invoice—two per cent. additional for each one per cent. of excess over the declared value. If the appraised value exceeds the entry value by more than forty per cent., such entry shall be deemed presumptively fraudulent and the collector may seize the goods. In any resulting legal proceedings the burden of proof shall be on the claimant to rebut the presumption of fraud by sufficient evidence. And in all suits or informations brought where property is seized pursuant to the customs collection laws, the burden of proof shall lie on the claimant of the property, provided that probable cause is shown for such prosecution, to be judged by the court. (§ 21.) This method was adopted because of the practical impossibility of securing a judgment under the law of 1874, which compelled the government to prove fraudulent intent in all cases. It was very difficult for the government to do this, since all the papers, *etc.*, concerning the transaction were in the hands of the importer, and were, by the same law, obtainable only in part and by a clumsy process.¹

In case goods are consigned by the manufacturer to any person in the United States, such person on their entry shall present to the collector, in addition to the verified invoice, a statement signed by the manufacturer, declaring the cost of their production. (§ 8.)² Where goods are consigned by a person

gested the added clause, "if there be used for covering * * * any unusual article or form designed for use otherwise than in the *bona fide* transportation * * * duty shall be levied upon such article or material at the rate to which the same would be subject if separately imported."

¹ See *supra* p. 66.

² § 11 declares that when the appraiser cannot to his satisfaction ascertain the market value of goods, he may estimate their *cost of production*, such cost to include "cost of materials and fabrication, all general expenses covering each and every

other than the manufacturer a like statement must be presented, signed by the consignor and declaring that the said goods were purchased by or for him, showing the time when, the place where, and the person from whom they were purchased, and giving in detail the price paid for the same. These statements must be attested by a consular officer, filed and transmitted in the same manner as are invoices.

3. *Remedies against Appraisement and Classification.*

Pursuant to the recommendations of several of the Secretaries of the Treasury, the number of general appraisers was increased. This office had been created for the purpose of correcting the inequalities in appraisement at the different ports. The general appraiser was to exercise a general supervision over appraisement, more especially to act with a merchant as a board of reappraisement. But the duties were too numerous and the number of officers too limited; in some instances only a single officer was assigned to over fifty different districts and ports.

By the present act the President is authorized to appoint nine such officers, at a salary of seven thousand dollars each, not more than five to be from the same political party.

Three of their number shall be on duty daily as a board of general appraisers at the port of New York, at which port there shall be a place for samples under their care. In any case where the collector deems the appraisement, as reported to him by the appraiser, too low, or where the importer within two days thereafter gives written notice of his dissatisfaction therewith, the collector shall order the goods to be appraised by one of the general appraisers. If either party is still dissatisfied (and in case it be the importer, only upon

outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of eight per cent. upon the total cost, as thus ascertained." To expect a manufacturer to thus reveal his business affairs and management would be preposterous, and the attempt has been found to be of but little practical utility and an obstruction of legitimate business. See Finance Reports 1890, p. xxxiii.

notice as before) the collector shall transmit the invoice and all the papers appertaining thereto to the board of general appraisers.¹ These shall examine and decide the case, and the decision of a majority of them is to be final and conclusive as to *dutiable value*.

As before, the decision of the collector as to *rate* and *amount* of duty is final, unless notice of dissatisfaction be given within ten days. When such notice is received, the collector must transmit all the papers in the matter to the board of general appraisers, who shall examine and decide the case thus submitted. The decision of the board is final and conclusive, unless within thirty days the collector or the importer file in the office of the clerk of the Circuit Court of the United States for the district a concise statement of the errors of law and fact complained of, and serve a copy of the same upon the other party. Thereupon the court must order the board of appraisers to make a return of the record and evidence taken by them, together with a certified statement of the facts involved and their decision thereon. The court may within twenty days after this return, and upon application of the party, refer it to one of the general appraisers, who is to take and return such further evidence as may be offered within sixty days thereafter by the Secretary of the Treasury, the collector or the importer. Such further evidence, together with the returns, shall constitute the record upon which "the said court shall give priority to² and proceed to hear and determine" the questions involved. This decision is final, unless the court or judge making it, deeming the question of sufficient importance, shall within thirty days thereafter allow an appeal to be taken to the Supreme Court of the United States.

¹ Either the regular board at New York or a board of three which shall be designated by the Secretary of the Treasury for such duty, at that port or any other port.

² It had been the custom of the courts to give only a few days in each term to the consideration of these cases, which accounts in large measure for the increasing number of cases standing over in the southern district of New York.

The general appraisers may administer oaths, may cite any person to appear before them, may require the production of letters, accounts and invoices and may cause all testimony to be reduced to writing and preserved (§ 16). Any person who neglects or refuses to attend or answer becomes liable to a fine of one hundred dollars, and if he be the owner or importer the appraisement by the board will be final. False swearing before the board is perjury and subjects the goods of the perjurer to forfeiture. The decisions of the general appraisers are preserved and an abstract of the more important ones is published at least once a week.

It will be noticed that this remedy as to amounts and rates of duty, while not so narrow as that existing between 1839 and 1845, which was simply an administrative appeal to the Secretary of the Treasury,¹ is not so liberal as that existing between 1845 and 1890. For it now lies in the discretion of the court to refuse the importer any remedy except that of appeal to the Board of General Appraisers. As regards appraisement, the remedy provided by the administrative bill is more effectual, since the Board of General Appraisers is more worthy of confidence than the former board to which appeals as to appraisement went.

During the first three months after their appointment, the general appraisers decided 779 cases of appeals on questions of value, 713 of which were in New York. During the same period they received 1,700 protests upon questions of classification, of which 1,129 related to importations at New York. They disposed of 704 of these cases, leaving 996 pending. From this it would seem that if the appraisers are to do their work well and carefully an increase in the force is necessary; otherwise they will fall behind almost as rapidly as the courts have done.

¹ The Supreme Court decided that there was no judicial remedy. *Cary vs. Curtis*, 3 How. 236, see *supra*, p. 55.

4. *Abolition of Damage Allowances.*

For many years there had been complaints by collectors and special agents that excessive damage allowances were claimed by importers, and that the decision of these questions were of such extreme difficulty as to afford opportunity for considerable frauds upon the revenue. It was urged that the provisions of the old law (1799), allowing deductions for damage to goods on the voyage, were adopted at a time when long cruises in small sailing vessels furnished the only means of importation. At that time damage to imported goods was natural and probable, and the deduction of such loss was just and fair. But it was contended that under our changed methods of transportation damage was extremely improbable, and may in any case be amply insured against; that in the absence of knowledge as to the original condition of the goods the custom house officials are entirely unable to determine the existence or amount of damage. To meet these objections the decision is thrown upon the importer himself. The recent law provides that within ten days after entry the importer may abandon to the United States, without payment of duties, all or any portion of his goods above ten per cent. of the total quantity or value of the invoice. The goods so abandoned are then to be sold at public auction or otherwise disposed of to the credit of the United States.

5. *Manufacturing in Bond and Drawbacks.*

The Act of 1799, contained ten sections regulating the payment of drawbacks.¹ The main provisions were as follows:

The amount of duties paid on the articles exported was required to be at least fifty dollars. The goods were to be exported in the original packages, without diminution or change of the articles contained therein.² Forms were prescribed in

¹ The former laws made similar but less extensive provisions. Act of 1789, § 30, *etc.*

² The exporter of liquors or unrefined sugars was allowed, however, (§ 75) under supervision of an officer, to have the casks filled up or to use new casks where necessary.

which the exporter was to prove under oath that the duties had been paid, and to state their amount. Provision was made for the transportation of imported goods from one district to another, as well as for their exportation. Proof was required of the arrival of the goods at the foreign port and the forms therefor laid down.¹

Subsequent laws repealed some of these provisions and made other slight changes. But the manner of establishing, determining and paying drawbacks has always been left largely to the regulation of the Secretary of the Treasury. Drawbacks were also allowed on the exportation of articles which had paid internal revenue taxes.

It is worth while to note a curious result of the system of drawbacks toward the end of the last century. The Act of June 5, 1794, imposed an internal revenue tax of eight cents a pound on all snuff manufactured in the United States, and to offset this tax increased the import duty on snuff to twelve cents a pound. On March 3, 1795, the internal tax was replaced by a tax on snuff mills, and a drawback of six cents a pound was allowed for all snuff exported. The result was that the drawback exceeded the tax, and that snuff now began to be manufactured in large quantities for the sake of the drawback. This necessarily led to the suspension and finally to the repeal of the law. But the system of drawbacks was continued in the case of other articles subject to internal taxation. The same system was renewed in connection with the internal revenue taxes levied during the war with England.

The great extension of the internal taxes during the civil war increased the importance of the drawback system.² The

¹ See *supra* pp. 27 and 31.

² Prior to 1842, in the exportation of goods on which the duty had not been paid, the debentures given to secure payment were cancelled on the payment of one per cent. of the amount, but on the adoption of cash payments there was naturally an immediate and heavy falling off in the amount of dutiable goods, *etc.* exported (see *supra* p. 50). Indeed, it was principally to restore this export business that the warehousing system was adopted, though it did not accomplish the

Act of August 5, 1861,¹ provided that on all goods manufactured wholly of imported materials² on which duties had been paid, a drawback equal to ninety per cent. of the duties so paid should be allowed under such regulations as the Secretary of the Treasury might appoint.

The recent tariff act provides (§ 25) that on the exportation of articles, in the manufacture of which imported materials are used, there shall be allowed a drawback equal to ninety-nine per cent. of the duties paid, provided that the articles be so made that the quantity or measure of the dutiable goods can be ascertained. The Secretary of the Treasury is empowered to make regulations by which the imported material in an exported product should be identified, the quantity used and the duties paid ascertained, the facts of the manufacture of the product in the United States and its export therefrom determined, and the drawback paid. To accomplish all this the Secretaries' regulations are of necessity so strict and burdensome that a great part of the contemplated benefit of the drawback is lost.

The early laws all allowed bounties on the exportation of pickled fish. The act of July 30, 1846 (§ 5), substituted in lieu of these bounties a drawback equal to the amount of the duties paid on the salt used in curing the fish, and the act of July 28, 1866,³ provided that salt in bond might be used for that purpose and the duties remitted on the amount proved to have been so used. The use of materials in bond has been considerably extended by the recent act. It provides (§ 10) that all medicines, preparations, compositions, perfumery, cosmetics, cordials and other liquors manufactured wholly or

desired result, and the storage of goods to be re-exported has never been its chief function.

¹ 37th Congress, Session 1, Chapter 45.

² The law of June 6, 1872, Vol. 17, Statutes at Large, 238, extended this to certain classes of manufactured articles in which the imported material "exceeds one-half of the value of the material used."

³ Re-enacted June 6, 1872.

in part of domestic spirits intended for exportation, may be thus manufactured in bond and exported under the inspection of appointed officers. A similar privilege was extended to smelters and refiners by section twenty-four. A temporary provision of like nature was made for the refining of sugar in bond without the payment of duty between March 1 and April 1, 1891.

6. Abolition of Fees.

By section twenty-two all fees exacted and oaths administered were abolished except in so far as they were provided for in the act itself. When such fees would formerly have constituted, in whole or in part, the salary of any officer, the law provided that such officer should receive a fixed sum for each year equal to the amount which he would have been entitled to receive as fees for such services during the year. Thus a step was taken towards the desired total abolition of fees. But the salaries of officers were left as indeterminate, as unclassified and as hopelessly disproportioned to their duties and responsibilities as ever. Another reform, the need of which has been long felt, but which this act, like its predecessors, did not attempt, and which for political reasons is distasteful to our legislators, is the abolition of many useless and expensive customs establishments and the consolidation of districts. This reform is demanded alike for reasons of economy and because of the changed conditions of commerce and transportation.

There are other reforms and experiments now demanded and advocated, and we may look forward to more or less frequent legislation on this subject. It is almost impossible to administer changing laws with an unchanged system. As long as the tariff policy of our government remains unsettled, we may expect its customs method to remain unfixed.

May we not say that from an administrative as well as an economic standpoint, perhaps as much mischief has resulted from the frequent changes in our tariff laws as from their defects?

CONCLUSION.

GENERAL TENDENCIES OF TARIFF ADMINISTRATION IN THE UNITED STATES.

FROM this brief outline of what seem to be the more prominent features of our tariff administration, we may say that there has been, on the whole, a steady development towards more stringent supervision, regulation and control over the importer. In summing up this development, perhaps we may roughly divide the objects of the system into three classes, conveniently designated as the protective, the preventive and the punitive.

I. *The Protective System.*—Under the early laws the protection of the revenue was insufficient because of long credits, *etc.* After long discussion and severe experience, the protection was made complete by the harsh requirement of cash payments, in 1842. The tendency from that time on was to alleviate the rigor of that law by more liberal provisions, such as warehousing and its accompaniments. During the civil war there was a sharp reaction and a curtailment of those privileges, followed ever since by their steady extension, without in any way endangering the revenue.

II. *The Preventive System.* Again we find the system starting with slight preventives against fraud, and apparently administered for the first quarter of a century upon the basis of confidence in the importer. When this confidence was once lost, it was lost never to return. Since then the laws of entry, inspection and appraisement have been steadily more extended, and have become increasingly severe.

III. *The Punitive System.* The law of 1799 contained heavy penalties and allowed summary methods of procedure.

These methods were rarely resorted to, however, although suits increased gradually as time went on. The rigorous enforcement of the harsh provisions of the law of 1861 brought about their extensive modification, until they were practically abolished in 1874. This over-action has been followed by the moderate reaction of the last law, whose adoption has been too recent to allow even of prediction as to future enactments.

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Volume I.]

[Number 3.

THE HISTORY OF
MUNICIPAL OWNERSHIP OF LAND
ON MANHATTAN ISLAND

To the Beginning of Sales by the Commissioners of the
Sinking Fund in 1844.

BY
GEORGE ASHTON BLACK, PH.D.

NEW YORK.
1891.

POLITICAL SCIENCE QUARTERLY.

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III.

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OF LAND ON MANHATTAN ISLAND**

**To the Beginning of Sales by the Commissioners of the
Sinking Fund in 1844.**

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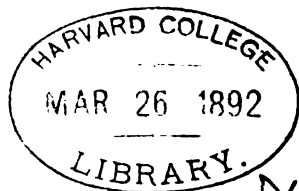
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THE HISTORY OF MUNICIPAL OWNERSHIP OF LAND ON MANHATTAN ISLAND.

INTRODUCTION.

THE distinction between land reserved for purposes of municipal administration and land held or disposed of solely for municipal revenue, came necessarily into question for New York City under the ordinance of 1844, which authorized the commissioners of the sinking fund to sell and dispose of all real estate belonging to the corporation and not in use for, or reserved for, public purposes. Under that ordinance the courts have held real estate for "public purposes" to be such as "parks, squares, courthouses, almshouses, engine houses, penitentiaries and other grounds and buildings of that nature having a general city character and devoted to general city uses other than mere revenue,"¹ also markets and wharves.²

Since 1686, when, by the Dongan Charter, the city received most of its primitive estate, the development of the municipality has included an ever better provision for public security, health, transit and education; and as a matter of course,

¹ Arkenburgh *vs.* Wood, 23 Barbour, 360.

² Gerard. City Water Rights, Streets and Real Estate, p. 114.

more and more real estate "for public purposes" has been needed and acquired. In great contrast with this continued acquisition stands the account as regards municipal real estate available for mere revenue.¹ It is now more than a generation since substantially the last of the common lands thus available were transmuted into private property. It might therefore seem at first sight of little use to investigate their history. Nevertheless there is much in the New York of to-day and in its administration which is referable to the city's ownership of these lands, or requires for its adequate explanation a knowledge of the circumstances of that ownership. Our numerous charitable institutions, which are not infrequently regarded as a proof of an exceptionally active private benevolence, rest in a large number of cases on endowments of common land; and not a few well-known family fortunes are traceable to early purchases from the city. The odd massing and juxtaposition of public and private institutions which cover almost solidly seven out of the eight blocks between 65th and 69th streets, Third and Fourth Avenues, is referable to an exceptionally long-continued reservation of common land there.² The plan of the

¹ From tables A, B and C, appended it appears that corporation real estate available for purposes of mere revenue constituted in 1820, nineteen per cent in value of all corporation real estate; in 1846, ten per cent.; and in 1855, six per cent. Also that corporation real estate reserved for public purposes constituted in 1820, five per cent. in value of all real estate public and private; in 1846, eleven per cent.; and in 1855, eleven per cent.

² The list is as follows: 1. City Normal College. 2. Foundling Asylum, R. C. 3. Hahneman Hospital. 4. Baptist Home. 5. Institution for the Improved Instruction of Deaf Mutes. 6. Public School No. 76. 7. Mount Sinai Hospital Dispensary. 8. Police Station, 25th precinct. 9. Fire Department Building. 10. Synagogue. 11. Seventh Regiment Armory. 12. Mt. Sinai Hospital. 13. Chapin Home. 14. Dominican Sisters. 15. St. Vincent Ferrer's Church, Convent and School.

This tract used to be known as the Dove Lots, from the Dove Tavern on the old post road. See Map VI. and subsequent references herein. Nos. 10, 14, 15 are built on ground which the city sold at auction in 1850 and 1885. Nos. 2, 3, 4, 5, 12 and 13 on ground leased of the city for ninety-nine years from 1870 and 1871 at a nominal rent. No 7 pays the city six hundred and thirty dollars annual rent for twenty-one years from 1881. The rest are public property.

present streets and avenues, except at either end of the island, was already determined in its main features, for the commissioners who devised it, by the survey of 1796, which first mapped out the bulk of the commons into city blocks.

A more scientific interest attaches to these lands in their relation to the city's financial administration. The clearness and completeness with which their history can be traced in our municipal records since 1686 raises the presumption that an account of them and of the conditions and administrative policy which led to their disposal will be of value as affording additional data to that department of the science of finance which deals with public, especially municipal, landownership. Such an account is aimed at in the following pages. No large tract has been omitted as distinct from isolated individual lots, and the water lots also are deemed a part of the subject until the adoption of a distinct policy in regard to them in 1734. Involved in the narrative and subordinate to its purpose will be found an account of the city debt up to 1830, with here and there a notice of some peculiar feature of early local taxation.¹

¹ It is much to be wished that a connected description existed of the city's experience in each instance with its other important sources of revenue, whether water lots, docks, ferries, markets or Croton works. The field is inviting to those who would undertake original investigation in the department of municipal administration; but there is the drawback that up to May, 1831, the records are in manuscript only, and so have to be studied at the city hall. Previous to 1831 the organization of the city government was extremely simple, and the records of a single body, the burgomasters and schepens under the Dutch, the mayor and aldermen thereafter, contain an account of the entire municipal administration. The work which is now intrusted to separate departments, each with its own records, was then done by committees who reported at the meetings of the board, on whose minutes their reports generally appear. It seems strange that records of such scope and value should remain so long unprinted. Their publication was begun during the Tweed regime, and suspended when that fell. A manuscript copy is now in preparation under the direction of the clerk of the common council. With his courteous permission, I have examined these records *seriatim*, and most of the statements of fact which I make are derived from them.

CHAPTER I.

ESTATE GRANTED BY APOSTILE OF 1658.

As a corporate body the city dates from February 2d, 1653,¹ and starts under the title of "schout, burgomasters and schepens of New Amsterdam." The schout or sheriff was for a short time also the "fiscal" of the West India Company, which still owned most of the island and exercised over it and the rest of the New Netherlands complete governmental powers through director general Stuyvesant and his Council of Five.

The two burgomasters transacted all the financial business of the corporation, and might likewise be members of the Council of Five. The municipal powers granted to them and the five schepens were extremely limited, and in fiscal matters particularly were conferred grudgingly and one by one, as the result of oft-repeated petitions to the director general and the home company. Nearly a year passed before the burgomasters succeeded in getting any fiscal powers at all; and then the grant of a tavern excise, to which a general burgher excise and then a tapster's excise were soon after added, was coupled with the condition, never fulfilled, of paying the salaries of the two preachers, the school-masters and the city secretary. These excises, moreover, were revocable at the will of the director general, who at one time sharply rebukes the city authorities for presuming to ask that they be made permanent.

In July, 1654, the city obtained its first piece of real estate, on condition that it should not be sold or mortgaged. This

¹ The records show that on this day the first city officials received their commissions.

² Their minutes were translated by Dr. O'Callaghan under a common council resolution of Dec. 20, 1847.

was the Company's tavern by the water side, on the present Pearl street, at the head of Coenties slip,¹ to be used as a Stadt Huys, or City Hall. Up to this time the most important work performed under the direction of the municipality was the erection of a line of palisades across the island along the line of the present Wall street, north of which were the outlying boweries or farms, as distinct from the incorporated town. To pay the city's share of the debt thus incurred, a special tax of six thousand florins was levied by authority of the governor general. The tax list numbers two hundred and twenty-eight names and indicates a population of hardly more than one thousand.

In September 1655 the dreaded Indian outbreak occurred, and all outlying settlers left alive were driven for the time being within the wall. Many of the refugees, desiring to remain permanently, asked that lots be given them for homes within the city limits, and the burgomasters petitioned the governor general for a survey in order that the request might be complied with. The survey was ordered "without regard to persons, gardens, or places," and the lots which trenched on land already disposed of were appraised. The distribution of these lots, which was to be made on payment where appraised, so as to recompense former owners, otherwise only on condition that the recipient build, was intrusted to the burgomasters. A few months later, the director general deeded to them in their official capacity certain lots west of Broadway, as appears from a series of five deeds by the burgomasters, all dated August 25th, 1656, in which his deed to them is cited. These lots have been approximately mapped out by Hoffman,² as fronting one hundred and seventy-six feet on Broadway, beginning about one hundred and sixty feet south of Rector street and extending west to high water mark.

¹ Map I.

² Estate and Rights of the Corporation of the City of New York, Vol. II., Diagram I. It is impossible to reconcile known distances with any fixed number of feet

The result of leaving the distribution of the vacant lots to the burgomasters was not entirely satisfactory to the director general. He complains of the "spaciousness and great size of the lots which some hold and occupy, the one more than the other." Two years after the survey just mentioned, he caused a new survey to be made of all the vacant lots, and discovered several hundred within the city wall on which no buildings whatever had been erected. All such lots he ordered to be taxed the fifteenth penny, and the proceeds to be applied to the fortifications. The option was given the owners to pay the tax on a valuation fixed by the burgomasters, or surrender the lots at the same valuation. If the proprietor preferred to fix the valuation himself, the burgomasters were to have a corresponding option either to receive the tax, or to take the lots and convey them at the same price to others, "until they or the proprietors shall construct buildings, when the tax shall cease."

Meanwhile the burgomasters, watchful for ways and means to eke out the scanty revenue of the city, and successful in securing some minor privileges,¹ had petitioned for the unconceded lots within the city walls. On January 20th, 1658, the desired apostile was signed. To just what extent the city benefited and how large a property it thus secured, I have not discovered. Records of the separate proceedings of the burgomasters occur in the same volume with the continuous records of the burgomasters and schepens, but only from March, 1657 to January, 1661. In these a few sales are noted and then in April, 1658 it is resolved to proceed no further with the granting of lots before a map thereof be made. At

to the Dutch rod as used in the old grants. In some grants the rod is defined as of 12 feet, in some as of 13, in some as a Rhineland rod, and in others it is used without definition. Hoffman, Vol. II., p., 167. By measuring off the distances given by Hoffman and in the deeds on Lyne's map of 1728, the earliest that is accurate, this and other parcels may be located with some approach to exactness. See Map I.

¹ Records of Burgomasters and Schepens, Vol. III, p. 38 of the translation.

this point the entries relative to the sale of lots cease and the map, if it was made, is lost. There are also "Records of deeds and conveyances in New Amsterdam from 1654 to 1672," in the office of the city clerk, but only three or four inconsiderable grants by the burgomasters, beyond the grant of the five lots in 1656, are discoverable. The Albany records may contain others.

On June 12th, 1665, the city was incorporated under English rule by Governor Nichols. His commission to the Mayor, Aldermen and Sheriff, constitutes the "inhabitants of New York, New Harlem, with all other his majesty's subjects upon the island called and known by the name of Manhattan's island, one body politique or corporate." Thus the city limits passed Wall street and took in the whole island. One of the "deeds and conveyances" just referred to is interesting because it is expressly stated to be confirmatory of a grant by the burgomasters, and is made by the deputy mayor "under commission and authority given unto us by the Right Hon. Richard Nichols, Esq., Gov."

The inference that the new mayor, aldermen and sheriff stepped immediately into the property rights of the schout, burgomasters and schepens, is confirmed by later proceedings of the "court," as the burgomasters and schepens, and after them the mayor and aldermen, were called from the prominence of their judicial functions. Thus in 1671 the court directs a petitioner to make an inquiry "whether there be any lot undisposed of within the city which can be no prejudice to the town or fort;" and the next year allows her "two hundred gilders" in lieu of the lot they have promised her. Governor Lovelace also writes to the court desiring that a gore of land near the fort be given to him and his neighbors at a proper valuation, and the court appoints three men to adjudge the value. Finally Governor Andros in his proclamation of 1675, shortly after the final surrender to the English, formally confirmed all prior grants, concessions and estates.¹

¹ Gerard, p. 30.

Still there are no data, unless among the deeds or patents recorded in the office of the Secretary of State at Albany, from which it can be gathered what the city's possessions during this time and until the Dongan Charter amounted to, or what benefit the city derived from them. The extent of the original ground briefs¹ from the West India Company to private individuals before the apostile shows that the estate received under it by the city in 1658 could not have been large, and of this, apparently, there remained in 1671 only lots exceptional in their nature or that could not be granted without prejudice to the town or fort. Such, for instance, was the first burial-ground on Broadway, two hundred feet south of the five lots and a little north of the present Morris street,² which in 1676 was ordered to be laid out in four lots of twenty-five feet front each, "the same to be sold at a vandoue or outcry."

¹ The descriptive portions of these ground briefs below the wall are quoted by Valentine, *City Manual* 1857, p. 498. The map he gives is not claimed to be accurate, but the total area can be deduced more exactly.

² Map 1.

CHAPTER II.

ESTATE GRANTED BY CHARTER OF 1686.

1. 1686-1733.

WATER LOT GRANTS IN FEE AND SALE OF ISOLATED OUTLYING UPLAND.

FOLLOWING the example of the Dutch Burgomasters twenty-five years previous, and with some experience themselves of the convenience of a source of revenue independent of the governor and council, the mayor and aldermen, soon after the arrival of Governor Dongan, petitioned for the unappropriated lands upon the island to low water mark. Unsuccessful at the time, they subsequently secured this and other concessions in the very liberal Dongan Charter of 1686. The only exceptions from the grant to the city of all such unpatented lands were the following:

Fort James.¹

One messuage or tenement next the city hall.

One messuage by the fort.

The governor's garden; later known as the queen's garden.²

The king's farm.³

The swamp next to the king's farm by the fresh water.³

The charter gave no right to the corporation to raise money by taxation. The first permanent taxing power which the city

¹ Map I.

² Southern portion shown on Map I. The farm and garden were granted to Trinity church in 1705, by letters patent from Governor Cornbury, in the name of Queen Anne. Hoffman, Vol. 11, pp. 175 and 180.

³ A pond north of the common. Map I.

obtained was to levy special assessments, under an act of 1691, "upon all houses within the said city in proportion to the benefit they shall receive thereby, for and towards the making, cutting, altering, enlarging, amending, cleaning, and scouring all and singular the said vaults, drains, sewers, pavements, and pitchings aforesaid." The act of 1693 for settling a ministry provided that ten vestrymen and two church wardens be chosen annually by the freeholders, the same as the aldermen, and required that the English minister be paid one hundred pounds which should be raised, together with a reasonable amount for the maintenance of the poor, by a tax levied annually, but by the vestry, not by the corporation.¹

An act of 1701, for appointing more effectual means for defraying the public and necessary charge in each city and county and for maintaining the poor, expressly excepts New York city and Albany, as having their own ways and means for defraying their public charge and maintaining their poor. It does authorize them "upon want of money in the treasury" to lay an annual tax not exceeding three hundred pounds for their public charge, but this provision was not acted upon by New York city, whether because of the three hundred pound limit, or because of the qualification "upon want of money in the treasury;" and the following year special two-year tax laws were obtained, the one "for the better support

¹ In England the act of 1601 transferred the levying of this tax to civil officers. In New York city the vestry retained its powers till the rate disappeared in the revolution. In England, as the expense of local government increased, taxes for other purposes were added to the poor rate and levied on the same basis, for example, the highway rate, the watching rate and the constables' rate, until in 1843 there were already twenty-five such rates tacked on; so that what was originally a voluntary charitable payment by parishioners to the church officers became the basis of all local taxation. In New York city there were likewise additions for other purposes, yet to be noted, but the system was supplemented by the system of special assessments for special benefit. In England such assessment has only lately been proposed and meets with bitter opposition. It is also rarely resorted to on the Continent, but its more frequent application is beginning to be advocated. See Friedberg, *Die Besteuerung der Gemeinden*.

of the poor," the other for "public and necessary charges." Only three times, however, in the next fifty years do these specially voted city rates occur, the minister's and poor's rate and assessment under the act of 1691 constituting the only local taxation.

The new charter cost the city three hundred and twenty-four pounds in fees to the governor and his secretary. Roberts remarks concerning this and a similar expense incurred the same year by the city of Albany for its charter, that these charges created no scandal and were accounted the proper perquisites of the office.¹ Nevertheless the cost was a matter of some concern to the city, whose whole annual expenditure did not equal this amount.² The most convenient resource was to sell some of the property acquired by the charter; and this the mayor was appointed to do. Sixteen acres on the Hudson near the present Gansevoort street were sold to a neighboring proprietor for sixteen pounds.³ Fourteen lots fronting Dock street, eighty feet deep into the dock as it then existed,⁴ brought four hundred and seventy pounds, as appears from the mayor's report, or something more than one pound the front foot for the space between the bridge into the dock, now Moore street, and the city hall at the head of what is now Coenties slip.

There was at this time a ready market for the lots along the east shore as far as Beekman's slip between the lines of high and low water, marked by the present Pearl and Water streets,⁵ and when the treasurer's statement at the beginning of 1687 disclosed a still existing debt of four hundred and

¹ History of New York, Vol. I., p. 195.

² Valentine's Manual for 1859, Article on the Financial History of New York City, from which a number of statistics hereinafter given are taken.

³ Book A of Grants, in Comptroller's office.

⁴ In Map I., eighty feet in depth of Blocks L and M.

⁵ Map I.

thirty-four pounds, the corporation¹ did not hesitate to take advantage of the demand.

Eleven of these water lots, extending from the present Coenties slip to Old slip, though not covering the whole space between high and low water,² brought as the mayor reports two hundred and ninety-four pounds, very nearly fifteen shillings the front foot.

No further sales of any account were made till after the regime of Leisler, except in 1690, when the city received fifty-five pounds for the vacant yard in the rear of the city hall. After Leisler's death in the spring of 1691, the buyers of the lots formerly sold were pressed to build the street and wharf agreed upon in front of them, and the extension of Broad street by the city between the two blocks sold in 1686 had therefore to be made. It was determined to build a new market house there, and a new ferry house at Peck slip was to be paid for.³ The revenue of the city, derived chiefly from the ferry and dock,⁴ being barely sufficient for its ordinary expenses, any public enterprises of the nature referred to were sure to result in sales of city land. Application to the Assembly for leave to levy a rate additional to the ministers' and poor's rate, as has been stated, was exceptional, the citizens feeling already overburdened by provincial taxes. These were largely a military necessity, due to a frontier open to Canada by easy water communication, and consequent conflicts which checked the growth of the province till after the fall of Quebec. Under such circumstances the space between the eighty feet lots first sold and Water street⁵ was disposed of in the autumn of 1691, the city receiving therefor three hundred and ninety-

¹ Named in the new charter "The Mayor, Aldermen and Commonalty."

² Map I., ninety-five feet in depth of Block N.

³ Cost £297. Treasurer's books.

⁴ In 1692 the ferry was leased for seven years at the rate of £148 per annum. In 1694 the dock was leased for seven years at £40 per annum. City Treasurer's books.

⁵ The rest of Blocks L and M, on Map I.

seven pounds, according to the deeds in the Comptroller's office.

At the same time the lots between high and low water from Wall street to Beekman's slip¹ were ordered to be exposed for sale. Some of them were claimed by the owners of the adjacent upland, but on summons to produce their patents the claimants could show no right beyond high water mark, and another order of sale was made at the following rates: from Wall street to Maiden Lane² twenty-five shillings per front foot; from Maiden Lane to John street, eighteen shillings per foot;³ and from John street to Beekman slip fifteen shillings per foot.⁴ So at these rates, with the condition that Water street be continued thirty feet wide and kept in repair, these lots were sold to anyone, after pre-emption offered to the holders of the adjacent upland. The amount obtained, as shown by the report of August 5th, 1692, was five hundred and ninety-four pounds.

A little later a building lot of one hundred and eighty feet front on Garden street and eighty-four feet deep, part of an old city burial ground as old deeds show, which must have been laid out on the abandonment of the first burial ground on lower Broadway as early as 1656, was also sold to the Dutch church, subject to be used for a church or houses for pious and charitable uses. The price agreed upon was one hundred and eighty pieces of eight, or fifty-four pounds, to be paid on sealing the patents, which were delivered February 19th, 1692. Except the gift of a church site to the English church, this is the first transfer of city land to any church or institution.⁵ The next was in 1703, when the English church received without cost the new burial place fronting three hundred and ten feet on Broadway,⁶ and on a portion of which its

¹ Blocks O, P, Q, R. Map I.

² Blocks O and P.

³ Block Q.

⁴ Block R.

⁵ No. 2 on Map I. indicates the building.

⁶ Map I.

first church had already been erected, conditioned "forever after to be appropriated for part of the public church yard of Trinity church and a burial place for any of the inhabitants of the said city."

In 1694 the citizens had to submit on the order of the governor to a special tax of three pence on the pound for the construction of a battery on the rocks edging the southern point of the island, and the corporation was obliged to borrow two hundred pounds on a mortgage of the ferry for like purposes of defence.¹ To pay this debt the mayor proposed to sell lots between Old slip and Wall street. Here again some of the upland owners urged a claim to low water mark, but failed to substantiate it. A front of two hundred feet² was sold, the price being fixed at thirty shillings the front foot. Only two other lots were sold till 1697, when on petition of the purchasers of the ninety-five foot lots between Coenties slip and Old slip³ the remaining space to Water street was granted them at ninepence the square foot.

Between 1696 and 1700 a new ferry-house at Brooklyn and a new city hall where the sub-treasury now stands at the head of Broad street⁴ were completed. The cost of the ferry-house was four hundred and thirty-five pounds. The city hall was for the time ambitious and expensive, costing from three thousand to four thousand pounds, as Valentine gives it. Towards this amount the old city hall brought nine hundred and twenty pounds in 1699, and sixteen hundred pounds were raised the next year by a direct tax under the Act of 1699, which authorized an annual levy for the purpose for three years. Nevertheless, in 1701 a debt still remained, and to obtain the money to pay it land sales were resumed. Hitherto no large tract of the commons had been parted with except an isolated tract of

¹ These data are from Valentine's article.

² Map I., two hundred feet front of Block S.

³ Block N.

⁴ Map I., 3.

sixteen acres on the Hudson. There was but one other large tract remaining on either river above high water mark. It lay between the Harlem line and the Hudson, to the north of Theunis Ides' land, extending from the present One hundred and seventh to One hundred and twenty-fifth street, and comprised about two hundred and forty acres. It is shown on the map which accompanies Riker's history of Harlem as Jacob De Key's land.¹ As far north as Twenty-eighth street the exceptions from the Dongan Charter, with the patents issued to private individuals prior thereto, covered practically all the land above high-water mark save the sixteen acres, certain swamps and the old Dutch common in the vicinity of the present city hall. Above Twenty-eighth street to the Harlem line, which ran due north and south across the island from Seventy-fourth to One hundred and thirtieth street, as shown on Riker's map, a single tier of patents stretched from either river a definite distance back into the woods leaving a large core of unappropriated land in the then wild and inaccessible center of the island, which passed to the city under the Dongan Charter. One gap along the river was left into which the city also stepped, the two hundred and forty acres already described. This tract was sold at public auction in 1701. The purchaser assigned his title to Jacob DeKey, to whom the deed was issued in consideration of two hundred and thirty-seven pounds. The same year, and for a like reason, the ground belonging to the city from high to low-water mark, beginning at Beekman's slip and running along the strand to the ground of Richard Sackett, was exposed to sale, and also the narrow strip of upland in part adjoining thereto, from Peck's slip to Sackett's, between the road and the river.² Twenty-five lots of twenty-five feet front were disposed of at the time for five hundred and fifty pounds, besides the more remote lots fronting Sackett's land, comprising five hundred and sixty feet front, which were

¹ Map II.

² Map I., Blocks T, T, T, and U.

sold to him for ninety pounds.¹ In 1699, a grant had been made to the widow of Leisler, of the unsold portion of block S., namely, about two hundred and twenty-five feet in length eastward from Old slip "in consideration for two streets run through her ground, for which she has had no satisfaction."

After this and the sales of 1701, there remained out of all the space between high and low water from Whitehall to the end of Cherry street at the swamp meadow as shown on Lyne's map, only two hundred and fifty-seven front feet outside street lines, and a corporation lot on the west corner of Peck slip and Water street, fifty-seven feet front by fifty feet deep.

On the Hudson water lots were very little in demand prior to 1734, shippers preferring the East river as more free from ice and freshets. Lyne's map of 1728, therefore, shows the original line of upland except for five hundred and fifty feet granted to four petitioners in 1699. In three of these grants the only consideration was the levelling of the river bank so as to make the streets accessible, and the laying of a wharf. For the fourth grant of three hundred feet, twenty pounds additional were obtained.

The next deficiency of municipal revenue was met by taxation under the two year act of 1702. Three hundred pounds sufficed in 1703, or less than three dollars in the thousand of valuation, and this was reduced to two hundred pounds the next year, since the close of the French war permitted a reduction of the city watch to a peace footing. In this year, 1704, a beginning was made of leasing outlying lands, petitions to purchase having been rejected. Twenty-one year leases were given of Beekman's swamp,² and of sixty acres which are readily located on Riker's map from the words of the resolution to lease, when once the point of beginning is ascertained, as it may be from the data given in Tuttle's work.³ The

¹ Map I., Block V.

² Map I.

³ Abstract of Farm Titles in the City of New York.

sixty acres are thus found to take in nearly all the land included within the extension of the line between the Young and Bennew patents, the road, and the Harlem line as shown on Riker's map.¹ The lease is here particularly noted as the first assertion of the right of the city against the conflicting right of commonage of the Harlem freeholders.

Their patent issued by Nichols in 1666 fixes the Harlem line with precision, but adds an undefined right of commonage in these words: "It is likewise further confirmed and granted that the inhabitants of the said town shall have liberty for the conveniency of more range of their horses and cattle, to go further west into the woods beyond the aforesaid bounds as they shall have occasion, the lands lying within being intended for plowing, home pastures and meadow lands only."² The lease to Codrington curtailed this liberty, but the New York claim was that such commonage was not a sufficient appropriation to take any land west of the Harlem line out of the Dongan Charter, and also that the Dongan patent of March, 1686, confirming the Nichols patent³ expressly cuts off this outside commonage. In spite of repeated opposition on the part of the Harlem freeholders, this claim was made good till just prior to the revolution. The Codrington lease and subsequent leases of outlying land generally, previous to 1760, seem to have been made rather to protect the commons from encroachment than for revenue. The rent reserved on the sixty acres was sixpence per acre.

From 1704 to 1732 there was little change relative to the subject in hand. The income and expenditures of the corporation show a monotonous moderation and a good balance on the right side. For ten years ending 1730, the average annual expenditure was three hundred and thirty-five

¹ Map II.

² Riker's History of Harlem, p. 252.

³ Ibid, 465.

pounds,¹ and the average surplus over one hundred pounds. No local taxation other than the poor rate was necessary, except in 1717, when the legislature authorized a levy of five hundred pounds for altering the course of the common sewer at the end of Broad street, and for cleansing and scouring the dock. The ferry, the chief source of revenue, was made more productive by securing under the Cornbury charter of 1708, the land between high and low water mark on the Long Island side from Wall-about to Red Hook, a measure by which the competition of individuals was curtailed. The ferry was rented in 1710 for one hundred and eighty pounds, and the dock for thirty pounds.

In 1719, with an expenditure of two hundred and fifty-two pounds, a surplus remained of two hundred and forty-three pounds. This was partly due to the sale of two hundred and thirty front feet of water lots between Beekman and Peck slips to the holders of the adjacent upland at their request. The price was one hundred and twelve pounds. Some of the purchasers of former grants now sought of the governor and council the privilege of gaining ground out of the river in their front. The corporation protested and began to press for a grant to itself "of all that may be gained out of the rivers around the island." Efforts to secure this and further concessions were incited by the wiping out of the surplus under expenses of 1723 and 1724, occasioned by "the ruinous condition of the great dock and of all its walls through the storm of July last." Finally in 1730 the Montgomery charter was secured. It gave the city complete and exclusive right of ferri-

¹ This expenditure seems remarkably small for a town of from six to eight thousand people. Under the law of 1691, however, much could be assessed back on the property benefited. The mayor and aldermen received no salary, though the mayor had the market fees. The treasurer received a commission. The poor were under the care of the church wardens. The only salaries in 1710 were for the town clerk, marshal and bellmen or watch, which amounted to £66. The remaining expenditure, £191, was chiefly for repairs to corporation property, and £42 sundries.

age and marketage, and four hundred feet beyond low water mark from Charlton street to the fort and from White Hall to Colear's Hook.

The deliberations over this charter were protracted, and the expense to the city of preparing and supporting it considerable. One thousand pounds for the purpose were secured on a mortgage of the most valuable lots the city possessed, those seven making two small blocks¹ between Moore street and Whitehall, Pearl, Water and Front, where a portion of the old dock had been. To discharge the mortgage it was thought best to sell the lots, and in 1732 they were purchased at auction by the principal merchants of the city for one thousand three hundred and forty-four pounds. This sale was the last of any account under the policy of disposing of the water lots in fee. By it the city parted with the last of its ground between the original high and low water lines, from Whitehall to James street or about the end of Cherry street, as shown on Lyne's map, save the lot at Peck slip.² Beginning with 1734, the policy was adopted of reserving an annual rent upon the water lots granted, and their history branches off from that of the upland. In granting them a few spaces were reserved, which the corporation afterward filled up and sold, as will be noticed hereinafter.

Lyne's map shows that the city was now extending into the vicinity of the lower commons. Beekman's swamp lay in the way, the lease of it had expired, and the city had already in 1728 sold ten lots of it to Jacobus Roosevelt for one hundred pounds, the money being appropriated "to the use of building a new powder house and to no other purpose whatsoever." The site selected for the powder house is interesting, as it afterwards became valuable for city lots. It is shown on Lyne's map, and was "a small island near the land to the

¹ Map I. Blocks W and X. The frontage of each block on Water street is 100 feet; the depth 108 and 136 respectively. The distances are from the deeds.

² Map I.

southward of fresh water." In 1734 the whole tract of Beekman's swamp, four and a half acres,¹ was sold to Mr. Roosevelt for one hundred pounds in addition to the one hundred pounds already paid for the ten lots. It still goes by the name of the swamp, and has continued to be the seat of the leather trade since tan-pits were dug there early in the last century.

¹ Map I.

2. 1734-1775.

FIXED ANNUAL QUIT-RENTS RESERVED IN GRANTING WATER LOTS.
UPLAND LEASED.

THE revenues of the city were now again ample for its expenditure, without recourse to other taxation than the poor rate, or to borrowing, or to sales of land; and so continued till 1750, except for a tax of two hundred and fifty pounds in 1737 for repairs to the city hall, and another of five hundred and seventy four pounds in 1741 for increasing the night watch after the negro riots. In 1741, also, a small amount yearly was tacked on the minister's and poor's rate to keep in repair the wells and pumps. By act of 1753 it was not to exceed one hundred and twenty pounds. Meanwhile watch-houses and the first almshouse were built; and the latter, on the site of the present city hall, marked a yearly increasing expense for the poor coincident with the war of 1744-48. In 1747 this amounted to seven hundred pounds, or as much as the city revenue from its property, licenses and freedoms.

The population increased slowly from eight thousand six hundred and twenty-two slave and free in 1731, to thirteen thousand and forty white and black in 1756, of whom two thousand three hundred and sixty-eight were black and for the most part slaves. During the thirty-five years preceding 1731, the population had just about doubled.¹

The grant of an isolated tract of ten acres of swamp land fronting on the present Broadway at Eighteenth, Nineteenth and Twentieth streets² was made by exception during this period to Admiral Peter Warren in 1744 at four pounds annual rent forever, "in consideration of his distinguished services in behalf of the kingdom and the city." In 1750-51 the

¹ The figures are taken from O'Callaghan's *Documentary History of New York*.

² The tract is shown on Holmes' map of Sir Peter Warren's estate. It extends six hundred feet west from Broadway.

cost of building a corporation pier at Coenties slip was paid with money borrowed on the credit of the corporation to the extent of eight hundred and sixty pounds. This proved to be the beginning of a system of borrowing which in twenty-five years saddled the city with a debt of thirteen thousand pounds at five and six per cent. And this notwithstanding the growth of the annual water rents from two hundred and thirty pounds in 1761 to eight hundred and thirty pounds in 1775; an average annual city rate after 1758 of sixteen hundred pounds, applied for specifically each year and tacked on the minister's and poor's rate;¹ and lotteries by which one thousand pounds was raised in each of the years 1756, 1757 and 1758, and three thousand pounds more towards enlarging the city hall in 1762. The important permanent acquisitions were a new gaol in 1756 and 1757; Bedloe's Island purchased for a pest-house in 1758, for one thousand pounds; barracks on the common for eight hundred men in 1758, three thousand five hundred pounds; five hundred stand of arms, 1758; public lamps first placed in 1761; extension of the city hall,

¹ By a law of 1764 the amount that might be tacked to this rate for wells and pumps was increased to two hundred pounds. The same year the amount annually required for the maintenance of roads and highways outside the city proper was tacked on also; in 1769 it was two hundred and sixty-eight pounds, and the cost of the poor about three thousand pounds, four times the cost in 1747. An act of 1761 authorized a tax of one thousand eight hundred pounds for fixing of lamps and providing a sufficient number of watchmen, and thereafter it was for watch and lamps that the one thousand six hundred pounds was required. The separation of church and state at the revolution, left the vestry without authority to levy any tax, and conferred no equivalent authority on the corporation, which henceforth made annual application to the assembly to levy a definite sum for its public charge, including the cost of the poor. This was voted in two items, the one chargeable on both city wards and the out-ward; the other only on that more thickly settled part of the island south of a line indicated in the tax law for the year, or therein left to be fixed by a city ordinance. The latter was the city rate, the former the city and county rate. It was in effect only the city rate that before the revolution had to be applied for every time it was levied. The watch rate was extended to city and county in 1846, but street cleaning and lamp rates continued to be levied south of the line only until 1863.

1762, seven thousand pounds; a square of two hundred and forty-eight feet on Broadway in the midst of the commons, hitherto owned by private individuals, in 1760, one thousand seven hundred and thirteen pounds; the Bridewell or city prison 1768-1769, not finally completed till after the revolution.¹

During all this period the policy of holding on to the common lands was continued, in spite of the increase of debt and the burden of taxation. An attempt was also made to get a better revenue from them by cutting up portions of them into building lots. One portion was the old common pasture of New Amsterdam. The Boston post road, later Chatham street and now Park Row, divided it in two sections, with a third adjacent triangular block now covered by the Times and Potter buildings.² The eastern section is shown on Lyne's map as a triangular tract bounded by the post road, the road which continues Queen street, and a connecting road. In 1759 a portion of the west section was surveyed into fifty-nine lots, as shown on map III.³ The northern boundary of the corporation land here was at the time in dispute. It was partially adjusted by an exchange deed in 1768⁴, but not finally until 1800, when the corporation received the ground within and to the south of Chambers street to Broadway, and released its remaining lots to the north as far east as Augustus street, besides lots 26, 27 and 28 east of Augustus street, to even up the exchange. Meanwhile the lots as first surveyed were offered to lease for between two and four pounds annually.

With the close of the war in 1760 the city began to grow

¹ The gaol, barracks and Bridewell were built on the common near the Almshouse, as shown in maps III and VIII.

² Map I.

³ The location of these lots in relation to present streets will appear on comparing maps III and VIII.

⁴ Map III.

rapidly, and by 1771 had reached a population of twenty-two thousand. Private enterprise opened up new sections to the northwest and northeast of the commons, and speculative values developed. In 1762 the commons east of the post road were laid out into lots,¹ and the city surveyor was instructed to offer them for twenty-one years at four pounds each per annum. The following year one hundred and fifty acres of the upper commons were staked off into lots of approximately five acres each, known as the Inclenberg lots, and most of them leased at auction. They were bid off for more than some of the purchasers were afterwards willing to pay, and after several concessions, a final deduction was made in 1772 of one-half the rent from the time of leasing, and the term made thirty-five years "from May 1st next." The lessees set forth that they had cultivated their lands, but as the land was poor soil they could not make the yearly rent out of them. Ten acres of this land was leased for thirty-three years in 1773, presumably at the reduced rates, for sixteen shillings per acre annually.

From this uniform policy of leasing for a term of years there were but two or three departures of any account until after the revolution. One of these was a perpetual lease to the Reformed Protestant Dutch Church for a burial ground in 1766, of a block of twenty-eight lots bounded by Thomas, Queen and King George streets, now Duane and Rose, Pearl and William.² The rent reserved was seventy pounds annually, about what the lots were worth at the time; and there was a condition not to "convert the same at any time for ever hereafter to private uses." It was released in 1790, when the corporation was hard pressed for money, in consideration of one thousand pounds. A similar grant was made the same year to the English Presbyterian Church, which in its petition cited "the distinguished generosity by which our brethren of

¹ Map IV, and compare Map XIV.

² Map IV.

Trinity Church were supplied with a large and convenient burying ground of the free gift of this honorable board." This church particularly desired the triangle between Beekman street, the post road and Nassau street, already mentioned as to-day occupied by the Times and Potter buildings. After some negotiation in which they were offered the block west of the Dutch church, but thought it too remote, their petition was granted and a perpetual lease ordered at forty pounds a year, eighteen pounds and fifteen shillings of which was released on petition in 1784 the old rent being then thought "too high for the quantity of land contained." As usual, there was the condition that it should not be applied to private secular uses, a reservation that turned out to be of considerable value to the city; for in 1856, on an agreement to release the condition for one-fourth the proceeds of the sale of the ground at public auction at a minimum price of two hundred and twenty-five thousand dollars, the city received as its share sixty-seven thousand five hundred dollars.

The revolution was now at hand. In the closing days of peace the award of the commissioners appointed under the act of 1772 to settle the interminable dispute over the Harlem commons was confirmed.¹ It was adverse to New York, and gave the Harlem freeholders in lieu of their indefinite commonage a triangular tract of two hundred and ninety acres; west of the Harlem line. The acquisition proved of little use to Harlem. It lay remote and unimproved, and once out of the city's hands, liable to taxation and assessments. Accumulation of these, especially on the opening of Third avenue, foreshadowed a forced sale of the property, to avoid which an act of the legislature was obtained in 1820 vesting the land in trustees for making sales, and applying the proceeds after paying taxes and assessments to the benefit of the town library and certain schools. The trustees, after having once in 1823

¹ Law of April 3d, 1775.

² Map II.

offered to sell the whole tract to the city, in 1825 sold almost all the two hundred and ninety acres, over five thousand city lots, for twenty-five thousand five hundred dollars, to Dudley Selden, from whom present titles are traced.¹

During the revolution the city remained in the hands of the British troops, and there was no regular municipal organization. The old vestry, however, seems to have performed some public functions, and certainly received corporation rents.

¹ For a very complete account of the controversy over the Harlem Commons, showing the title into Dudley Selden, and his conveyances down to 1838, see pamphlet prepared by Isaac Adriance.

3. 1784-1802.

POLICY OF LEASING BUILDING LOTS CONTINUED, BUT ONE-HALF
OF UPPER COMMONS SOLD IN FEE.

In February 1784, the meetings of the common council were resumed. During the war five thousand five hundred pounds unpaid interest on the city debt had accumulated, the public buildings required overhauling, and the Bridewell was still to be finished. There had been, of course, accumulation of unpaid rents, but most of the leases except at Inclenberg had expired, and there was difficulty in adjusting arrears. As a special committee to look into the matter sets forth: "Arrears of rent are due to the corporation from many meritorious persons who have taken an active and decided part in the cause of their country, and suffered all the inconveniences of exile and the loss of all their possessions. Many other persons well affected to the cause of their country, lessees to this corporation, who left the city in the year 1776, have from poverty and other unavoidable causes been obliged to return within the British lines before the peace took place, and have been prevented from occupying their habitations and deriving any advantage from their leased estates because of their attachment to the American cause, but upon condition of their paying rent to the vestry or Mr. Smyth, their treasurer." "In the first case it will, in the opinion of the committee, be inconsistent with the rules of equity to expect from such well attached returning exiles the rents which became in arrears from the time of their leaving the city in 1776 to the time of their occupying their respective estates on the 25th of November last." "In the second case, the committee are of the opinion that no rent ought in justice to be exacted from the citizens who were and continue well attached to the American cause, and actually paid rent to Mr. Smyth for the period of time they actually paid rent as aforesaid."

The report was approved, and it was further ordered "that no allowance or abatement to any person or persons whomsoever who are grantees of the corporation be made for any rents which became due prior to the first day of May, 1776, or subsequent to the 25 November last." This arrangement was not satisfactory to a number of tenants, but was nevertheless enforced when necessary by sale of the lessees' improvements. It was amended the next year by a resolution that all dues to the corporation for real estate accruing between May, 1776, and November 24th, 1783, be remitted, provided that the debtors shall swear or prove by some other person that "he or she or they have resided out of the British lines during the late war, and have not directly or indirectly received any rent or other emolument whatever," from the property during that time. On this basis there were collected up to September, 1785, seven thousand four hundred pounds, including accruing rent on the new leases, which were generally for twenty-one years, and at about fifty per cent. advance over rates before the war, six pounds being the usual yearly rent for lots east of Chatham street. Besides enforcing to this extent the collection of rents, a ten thousand pound tax was raised as against six thousand six hundred and thirty-one the last year before the war, four thousand two hundred and thirty-three of which had been "for the cost of the poor." After an unsuccessful attempt to secure a part of the proceeds of confiscated estates in the city, the corporation, in 1785, sold twelve lots gained from the water, three made out of the corporation lot on the west corner of Water street and Peck slip, on which there stood one brick building of twenty-five feet front, for two thousand three hundred and eighty pounds, and nine near the corporation wharf at the North river for three thousand one hundred and seventy pounds.¹ These sales,

¹ The block of which the nine lots are the western portion is that bounded by Fulton, Vesey, Greenwich and Washington Streets. It had been reserved for a market site in granting the water lots, and there was a market house on part of the eastern portion and fronting Greenwich St.

however, only met the emergencies of the moment, leaving the old debt of thirteen thousand pounds and four thousand two hundred pounds interest still unpaid. To pay this off it was proposed to sell outright a portion of the commons, and with some circumspection in breaking a precedent that had kept the commons intact for more than a century the plan was proceeded with.

In May 1785, a survey had been ordered "of the vacant land belonging to the corporation situated between the post and Bloomingdale roads, into lots as near as may be of five acres each and numbered, leaving a middle road between the two said roads."¹ The following December the city surveyor presented his map, and a committee was appointed to see how the lots could best be disposed of. In February the committee advised a sale in fee of part of the lots if a reasonable price could be obtained. It was not, however, till the spring of 1789, when the times were more propitious, that a sale was ordered. The purchasers were to pay one tenth within ten days after the sale, and to have five years for the payment of the residue, with interest at five per cent, the debts or bonds against the corporation to be discounted in payment. On these terms one hundred and ninety acres were sold to seven purchasers, partly at auction, and partly at private sale to some who held leases.² The receipts for the one hundred and ninety acres were five thousand four hundred pounds, an average of about twenty-eight pounds, or seventy dollars, an acre. One hundred and five acres of the land sold lay within that portion of the commons bounded very closely by the present Thirty-second and Forty-second streets, Broadway and Lexington avenue, leaving there thirty acres still the property of the city though under lease, with fifteen acres more known as the powder house lots and adjacent on the

¹ These lots are a portion of those shown on Map V.

² The specific tract sold each individual and the price are shown on Map V, below Forty-eighth street, which is marked at its intersection with the middle road.

south, held unoccupied in reserve.¹ Of the remaining eighty-five acres sold, ten lay adjacent to the powder house lots on the south, and seventy-five between Forty-second and Forty-eighth streets, Third and Fifth avenues.² Westward of this portion the commons, as surveyed by Goerck in 1796, extended nearly to the present Sixth avenue, widening out to near Seventh avenue at Sixty-fourth street and to Second avenue at Sixty-seventh street, and then continuing within or near the lines of these avenues until they are cut by the line of the Harlem commons at Ninety-third street and Seventy-ninth street respectively. The whole commons as thus constituted contained about eleven hundred acres.³

Hardly more than an eighth of what remained after the sale of 1789 could be divided into five-acre lots so as to front on some then existing road. The rest was hemmed in by the land of private owners, and being for the most part rough and rocky, had little value until future streets should be at least in sight. This may in part explain an apparently ill-considered private sale of fifty acres in 1792, for less than thirty dollars an acre. It lay immediately in the rear of the premises of the purchasers, and within the lines of Fifty-seventh and Sixty-fifth streets, and Third and Fourth avenues.³

Between 1790 and 1800, the city's growth was phenomenal. The population doubled to sixty thousand, the assessed valuation nearly quadrupled to twenty millions. It was clear that the city was destined to future greatness, and forecasts began to be made as to stages in the advance. A far sighted policy could hardly fail to suggest itself as to the commons. In February 1796, the committee on common lands reported

¹ Map VII, which shows the original lots with the present streets cut through them. The leased lots are numbered 16, 17, 18, 21 and 22. The powder house lots 31, 32, and 33.

² Map V.

³ Maps V and VI. The key to locations on these maps above Forty-second street, is found in the figures and lines on the Middle Road, which show the intersection of present streets and Fifth avenue.

"that they have had a survey made of the commons, contemplating that the same may hereafter be improved as part of the city, to which end they have streets regularly laid down. They are unanimously of opinion that the best mode of improving the same, is to sell at public vendue the one-half, and to lease the other for a term of years. They are induced to recommend this plan from a belief that it will tend to a speedy improvement, and that the one-half which is to be leased will at the end of the term be worth more than the whole now is."

The sale as recommended took place in June, with the same conditions as to the time of payment as in 1789. Fifty-eight alternate lots were disposed of to forty-one purchasers, for an aggregate of seventeen thousand six hundred pounds, or about sixty-six pounds or one hundred and sixty-five dollars an acre for two hundred and sixty-six acres. There was also a quit-rent reserved of four bushels of wheat per lot, and each purchaser had the option, quite generally taken, to lease an adjacent lot for twenty-one years at four pounds per year. The buying was speculative as compared with the rates of 1789, which were based on farm values. Many of the purchasers seem to have regretted their bargains, and failed to claim no less than twenty-six of the fifty-eight lots sold. Twenty-one of these were resold in 1801 at a reduction of forty per cent from the prices of 1796.¹ The lots lying east of Third avenue and north of Sixty-sixth street were held back at the request of adjacent owners who desired them at private sale, as the lots if sold to others would cut them off from the post road. The board valued these lots at from one hundred and sixty pounds to two hundred pounds, and a quit rent of one bushel of wheat per acre. Thirty-three and a quarter acres were taken at the former price by one owner, three and two-sevenths acres at the latter price by another,

¹ Maps V. and VI. The prices obtained in 1796 are marked on each lot in pounds; those obtained in 1801, in dollars. Lots sold later are dated. In two or three cases the same price is marked twice on a lot, as a means of showing more clearly its extent.

and lots 202 and 204 were sold to a third purchaser at one hundred and sixty pounds per acre for twelve hundred and thirty pounds.¹ These sales made the aggregate area so far disposed of in the upper commons just about one-half the whole.

By help of receipts from sales of 1789 and 1796, the city was able to close the century with a debt but very little larger than it was in 1775, namely, thirteen thousand five hundred pounds as against twelve thousand eight hundred pounds. During the decade it had moreover built a new almshouse on the common in the rear of the old one,² defraying the greater part of the cost, however, from ten thousand pounds proceeds of a lottery granted by the state; levelled the fort under the act of 1790, though the state still held the site; improved that portion of the present Battery granted by the act aforesaid; purchased land at Bellevue for three thousand eight hundred pounds, and erected a hospital building there for the state health office, which was however disused on the opening, soon after, of a state establishment on Bedloe's Island; and acquired also ninety lots for a Potter's field, being the greater part of the present Washington Square, at a cost of one thousand eight hundred pounds.

¹ Map VI.

² Map VIII.

4. 1803-1815.

EXTENSIVE PERMANENT IMPROVEMENTS PAID FOR BY SALES OF
NEW BUILDING-LOTS. UPPER COMMONS AND MOST OF
OLD BUILDING-LOTS LEASED.

In pursuance of the policy adopted in 1796, the unsold half of the upper commons was held in reserve. In one or two cases a purchaser was allowed to exchange his lot for another. In one case, in 1810, assurance that the lessee of one of the alternate lots should have a renewal at the expiration of his lease was refused, on the ground that the alternate lots were "leased with the expectation and on the plan that by their increase in value through the improvements on the lots sold in fee, the corporation should reap substantial advantage, and that to extend the lease and in any way bind the corporation so that it could not take advantage of this increase at the end of the lease would be to abandon the original plan and establish a precedent that might seriously interfere with the possible revenue of the corporation."

In 1805 the leases of lots on the lower commons began to fall in.¹ The old leases had been for twenty-one years at from ten to fifteen dollars rent. Where they had not been improved and the lease expired, the new lease was sold at auction, with the condition that a brick building of at least two stories and a garret should be built, which improvements should be valued at the end of the term by appraisers reciprocally chosen and a new rent, fixed by the corporation, agreed to, or the buildings surrendered at the valuation. With those who had improved their lots private agreements were made on the same

¹ Jan. 1803, the corporation had eighty-four lots on lease beside the alternate lots of common lands:—seventy-one on the lower commons; seven along the west side of Peck slip to Front street, filled out in front of the lots sold in 1785; six at Ingleberg, being part of the five-acre lots reserved below Forty-second street in the upper commons. Of these leases three expired in 1804, thirteen in 1805, thirty in 1806, twelve in 1807 and 1808, and the rest between 1813 and 1826.

basis. But in some cases these lots too were offered at auction, the corporation taking the buildings at its own appraisal. Lots thirty feet wide on the south side of Chatham street were re-rented for two hundred and fifty dollars; twenty-five feet lots on the north side for two hundred dollars. Lots on Thomas, Augustus and William streets brought ninety and one hundred dollars; small lots less than twenty-five feet square at Peck slip, one hundred and twenty-five dollars. There was at this time, as these increased rents indicate, a prevalent confidence in the future rapid growth of the city. The census of 1805 showed an increase of population of twenty-five per cent. in five years. It was predicted that the city would contain seven hundred thousand inhabitants in 1855, and over three million in 1890.¹

The conditions favoring, the city laid out fifty-nine half-acre lots at Inclenberg—where there were thirty acres² the leases of which had just expired—with the intention of offering them to lease; but the city was now borrowing at the rate of forty thousand dollars a year for the new city hall alone, and the opening of Canal street was in hand. A compromise between selling and leasing was effected by offering the lots at auction on perpetual lease, with a reservation of twenty bushels of wheat or its equivalent in money on each lot per annum. The fifty-nine lots, sold on these terms to about half that number of purchasers, brought sixty-two thousand dollars, or at the rate of about two thousand dollars an acre for lands surrounded by those which in 1789 had been sold at seventy dollars. It was more than the lots turned out to be worth and a few years later, when under the act of 1807 the new streets were laid down in such a way as would spoil their lots, the purchasers generally accepted the city's offer to take back the lots and repay the money with interest, in bonds running two, three and four years from 1811. A similar dis-

¹ Daily Advertiser, April 1806.

² Map V., Lots 16, 17, 18, 21, 22, 25, 26.

position was made of the Dove lots, so called, a square of about twenty acres, bounded nearly by Fourth and Third avenues, Sixty-fifth and Sixty-ninth streets,¹ and which, as under lease, had not been sold in 1796. This tract was plotted out by the city, so that a public parkway two hundred and fifty feet wide should run through its centre and be intersected by a street between the avenues. A square of one hundred and twenty-five feet was reserved for a church and academy. The twenty-eight lots left, most of them sixty-two by three hundred and sixty-five feet, were sold at auction in the spring of 1807 for a total of twenty-one thousand dollars and a quit-rent of twenty bushels of wheat per lot.

By this time a third public work of considerable magnitude was under way, namely the filling up of the fresh water or Collect, as it was now called, a deep pond just north of the lower commons. It was connected with either river by swamp land, through which its outlet ran eastward, crossing Pearl street, as may be seen in Lyne's map.² The extensive marsh on the west along the line of Canal street had been expressly reserved from the Dongan Charter, and in 1733 was granted to Anthony Rutgers by George II., saving the rights of the city to the pond and the island, on which stood the powder house. To secure its title to the pond beyond doubt, the city purchased of Rutgers' heirs, in 1791, all their claim or right to the soil under water, paying therefor one hundred and fifty pounds. The following year a strip of the land between the Collect and Broadway was purchased of the executors of Mary Barclay for three hundred and fifty pounds, making the original cost to the city of its Collect property five hundred pounds. A canal connecting the two rivers had been proposed, on the supposition that there might be sufficient difference of tidal level, which subsequent measurements did not confirm. Finally it was determined to drain the swamp

¹ Map VI.

² Map I.

by a channel in Canal street, and to fill up the Collect. As soon as the strip of swamp towards Broadway was reclaimed, its site value and the same causes that induced the sales of 1806 and 1807 led to the offering of the new lots at auction. Twenty lots sold to seven different purchasers in 1809 brought twenty-five thousand five hundred and twenty dollars.¹

The old powder magazine was now out of place in the neighborhood of the Collect, but as the common council had assented to the keeping the state powder there, the legislature was petitioned to provide another building within the city. Under the act of 1808, supplemented by that of 1809, the governor purchased two of the five-acre common land lots, numbers 102 and 103, as a site for a new state magazine.² One of the lots was under lease from the city, the other was private property subject to a quit-rent to the city of four bushels of wheat annually. For its interest in the two lots the corporation received seven hundred dollars. The old powder house site was cut up into seven lots, five of which, with the three lots west of Elm street,³ were leased in 1811 for twenty-one years at from seventy-five to one hundred and thirty-five dollars each. At the same time six lots at Peck slip, where the city had lately filled in from Front to South street a strip fifty feet wide in front of its other lots, were leased at auction for twenty-one years, the corner lot at South street, seventeen feet by fifty, for five hundred and eighty dollars, the others at from two hundred and ninety to four hundred and fifteen dollars. The lessees, however, found the filling in defective, and after a deduction of one-half the rent had been offered them, the lots were sold in fee for twenty-one thousand four hundred and fifty dollars, about four dollars per square foot.

¹ They are those marked alphabetically on Map VIII. Lot B was bid in by the city for three thousand eight hundred dollars, and shortly after sold at private sale for four thousand dollars.

² Map VI.

³ Map VIII.

By the beginning of the year 1812 the city debt had become a matter of serious concern. Since 1803 the cost of the city hall, four hundred and twenty-five thousand dollars; advances for property taken for Canal street, one hundred thousand dollars; land at the foot of Dey street, where the corporation proposed to fill in and sell lots, sixty-five thousand dollars; six and one-fourth acres more at Bellevue, to receive the almshouse when removed, twenty-two thousand five hundred dollars; and the first year's expenditure on the new almshouse and penitentiary there, seventy-five thousand dollars—in all nearly seven hundred thousand dollars, had been met with bonds or money borrowed on the bonds of the city at six and seven per cent. These bonds were very numerous, constantly falling due, and a source of annoyance and embarrassment. In view of these conditions the common council, by a vote of ten to three, resolved to petition the legislature for leave to create a six per cent public stock of nine hundred thousand dollars with which to fund this debt and to finish the city hall and Bellevue buildings. The cost of taking public squares laid out under the act of 1807 was also pleaded, but in fact was not incurred for some years. The act authorizing the issue was passed in June, 1812.

Meanwhile a sale of the newly filled Collect lots was ordered, and thirty-four of them were disposed of at auction in April, 1812 to eighteen purchasers for twenty-two thousand dollars.¹ The corner lot at the old city hall, head of Broad street, twenty-five by one hundred and twelve feet, was also sold for nine thousand five hundred dollars. In June, on the recommendation of the market committee, it was voted to sell seven lots near the Hudson market on Greenwich street, being the rest of the block part of which had been sold in 1785, and to set aside the proceeds to build Washington market on the block newly filled in front.

The report of the comptroller in January, 1813, showing an

¹ Map VIII.

expenditure on the Bellevue buildings for the year of eighty-one thousand dollars, and of ninety thousand dollars towards the completion of the city hall, was followed by a vote to sell three lots at the old city hall, and five others of which the city had bought in the lease prior to extending Chambers street to Chatham.

The three remaining city hall lots, twenty-three, twenty-six and one-half and twenty-seven feet by one hundred and twelve feet, produced twenty-five thousand dollars; the five Chambers street lots,¹ thirteen thousand eight hundred dollars; and the seven Greenwich street lots, thirty-four thousand and fifty dollars; making the total sales within a year's time over one hundred thousand dollars. Of the stock, six hundred thousand dollars had been at once sold July 9th, 1812, and one hundred thousand dollars more in December.

In the spring of 1813 a suit to decide whether the lessees should pay any of the assessment for opening Chambers street to Chatham was decided in favor of the corporation. As a portion of some of the lots benefited had been taken for the new street, damages had also to be awarded some tenants. To determine whether the jury had awarded these fairly, a committee of the common council laid down the correct but very abstractly stated principle, "that the damages allowed ought to be such as after deducting the assessment would leave a principal the interest of which, added to an apportionment of the principal itself among the years yet to come of the term demised, would so reduce the original rent as to leave a just reservation on those portions of the lots which still remain."

The year 1813 was further marked by the establishment of the sinking fund, with which the after-history of the city property in land is so closely connected that a restatement of the views of its founders seems warranted. The comptroller in a report of the 19th of April had pointed out that

¹ Map XIV. Lots 17 and i-iv inclusive.

the total amount of the debt or stock outstanding, seven hundred thousand dollars, did not exceed the cost of the City Hall and Bellevue buildings,¹ and this he regarded as a proof that the city's ordinary receipts from taxes and revenue would be sufficient for its ordinary expenses. The one hundred thousand dollars lately obtained from sales of public lands he balanced with the further extraordinary outlay for the Varick basin, the opening of Chambers street and other minor improvements. He argued that with the completion of the Bellevue establishment the extraordinary expenditures would cease for some time to come, and that so far as there should be a normal increase in the city's expenses, the normal increase in the city revenue might be expected to meet it; that therefore the city debt could be wiped out by the establishment of a sinking fund, which he proposed should be administered by the mayor, the chairman of the finance committee, the chamberlain and the comptroller. To this fund he would appropriate:

1. Commutation of quit-rents on water grants prior to 1804.
2. Mayoralty fees.
3. Market fees.
4. Cab, vault and pawnbrokers' licenses.
5. Twenty-five per cent. of all proceeds of city property sold in fee.

He estimated that the accumulation of quit-rents up to December 31st, 1826, when the stock fell due, would yield a principal and interest of seventy-five thousand dollars; that market and mayor's fees and licenses would yield nine thousand dollars a year, which, with the interest applied quarterly,

¹ The cost of the present city hall up to 1813 was five hundred and twelve thousand dollars. It was finished in 1814 after a further expenditure of twenty-six thousand dollars.

The Bellevue buildings, almshouse, penitentiary, and workshops, begun in 1812, had cost up to 1813 one hundred and twenty six thousand dollars. They were finished in 1817, at a total cost of four hundred and twenty-one thousand dollars.

would produce one hundred and eighty thousand dollars; and that twenty-five per cent. of sales of public property up to 1827, with interest, would swell the total to four hundred thousand dollars, leaving of the seven hundred thousand dollars city debt then existing three hundred thousand dollars still unprovided for. To meet this there were eighty five-acre lots of common lands the leases of which would expire in 1824, and which then might be sold to extinguish the rest of the debt, or the balance of the stock might be extended ten or twelve years, by which time the sinking fund would extinguish it. In July the finance committee reported favorably upon the plan, with the amendment that the proceeds of the sale of the government house lots presently to be mentioned should go entirely to the fund. Until a special law establishing the board could be secured, a sinking fund committee as recommended by the comptroller, with the addition of the recorder, was appointed to carry out the plan.

The government house property, so called, was a part of the fort which, as excepted from the Dongan Charter and held by crown, passed to the state at the revolution. Under the law of 1812, amended by that of 1813, the corporation purchased of the state unconditionally the government house which had been erected on the site of the fort and facing Bowling Green, together with the grounds immediately in the rear. Shortly afterward the state ceded the rest of the block to the United States for defence purposes, but through the exertions of the city comptroller, Thomas Mercein, who proposed and conducted the negotiations, conveyance was made to the city by the state and United States, in return for ground at the Narrows purchased by the city and transferred to the United States.¹ The corporation now having possession of the whole square bounded by the Bowling Green, Whitehall, Bridge and State streets, laid it out in seventeen lots,² which were sold at auc-

¹The states's share in this transaction was authorized by Chap. XIII. amended by Chap. XXVIII. laws of 1814.

²Map IX.

tion in the spring of 1815 on terms very advantageous to the city. The comptroller's account epitomizes the result as follows:

ACCOUNT GOVERNMENT HOUSE GROUNDS NEGOTIATIONS.

To cash paid state	\$50,000	By cash received for lots, . .	\$158,200
Narrows for U. S.	19,335	Buildings	6,287
Int. on first purchase	2,000	Rent	1,463
For the buildings	14,245		
Net Gain	80,370		
	<hr/>		<hr/>
	\$165,950		\$165,950

The proceeds were not, however, paid into the sinking fund but used directly, eighty per cent. gross of them to take up still outstanding city bonds, which were thereby all cancelled except one of eighteen thousand five hundred dollars. The debt of the city was thus reduced to the seven hundred thousand dollars outstanding stock. The sinking fund received an addition, however, shortly after, of the commutations of wheat quit-rents on common lands. This was voted in February, 1816, on the report of the comptroller in which he argued that "to allow commutation would conduce to improvements on the sold lots, and so benefit the alternate leased lots, and that as the common land embraces a property which it is presumed will hereafter add much to the resources of the corporation, every encouragement ought to be given to render it more valuable." The quit-rents were accordingly allowed to be commuted at six per cent., reckoning wheat at two dollars the bushel. This was in March, 1816. In February, 1817, the White street quit rents¹ were allowed to be commuted, but at two dollars and half the bushel.

¹ Map VIII, lettered lots.

5. 1816-1821.

REPETITION OF FORMER EXPERIENCE OF SALES AFTER WAR AS
TO DOWNTOWN LOTS, BUT RESIDUE OF UPPER COMMONS
STILL UNDER LEASE.

Between May, 1816, and May, 1820, the ordinary receipts fell behind the ordinary expenditures two hundred and ten thousand dollars, while the extra payments amounted to three hundred and ninety thousand dollars. Neither were any large enterprises on hand during the period, like the city hall and Bellevue establishment, except that forty-three thousand dollars of the cost of the latter fell in the years 1816 and 1817. Forty-seven thousand dollars were spent in filling the Varick basin and making its bulkheads; twenty-seven thousand dollars in paying the bonds given Mr. Varick; and twelve thousand dollars in filling another block between King and Charlton streets that had been reserved in granting water lots. The total of other valuable acquisitions and improvements, excepting Oliver street, eighteen thousand dollars; Canal street final awards, seventeen thousand dollars, and the ninth ward avenues and streets, seventy-six thousand dollars, some of which would come back in assessments, did not much exceed one hundred thousand dollars for the four years.¹ The deficit must be ascribed to the industrial depression that followed the war, and culminated in the crisis of 1819, and to unwillingness under the circumstances to close the era of low taxation that had hitherto prevailed, as shown by the low valuations of the years previous to 1815 and then by the low rates, less than four dollars and a half on one thousand up to 1820. During the war, also, bills of credit had been issued by the corporation, and one hundred and thirty-five thousand dollars of

¹ These data are taken from the comptroller's report entered on the common council minutes of April 20, 1820, in which he reviews the fiscal transactions of the four years preceding.

these had to be redeemed between 1816 and 1820. To meet the deficit temporary loans were obtained, amounting to two hundred and twenty-five thousand dollars; the reserve of the nine hundred thousand dollars stock of 1812 was sold, one hundred thousand in June, 1817, and one hundred thousand in September, 1819; and for the rest, sales of land were made between the two issues of stock as follows: twenty-nine more Collect lots were sold at auction in Feb. 1818 for twenty-five thousand three hundred and twenty-five dollars, twenty-two of them to a single purchaser;¹ thirty-five out of forty-five acres of land at Bloomingdale² which had been turned over to the corporation by an official to square his accounts were sold at the same time for twelve thousand one hundred and seventy dollars; also the remaining curtailed lots in the angle north of Chambers street and east of Augustus, for seven thousand one hundred eighty-five dollars;³ fourteen lots at the Albany basin sold in October, 1818, brought forty-seven thousand eight hundred dollars;⁴ and twenty-two lots at the Varick basin, similarly sold in January, 1819, brought one hundred and twenty-seven thousand dollars.⁵ The Albany basin lots were the first and southernmost of the blocks reserved in granting the water lots on the Hudson river, and filled in by the corporation for sale. The Varick basin lots had once been granted, but had been bought back and filled in as already noted.

These sales, with six thousand five hundred and twenty dollars received for an isolated lot sold in 1816, aggregate two hundred and twenty-six thousand dollars. Deducting twenty-five per cent, to be paid to the sinking fund under the ordi-

¹ Map VIII.

² Ten acres of this land are shown on Map XVI between Sixty-third and Sixty-fifth streets, Eighth and Ninth avenues.

³ Map XIV, lots V-VIII inclusive.

⁴ Map XI.

⁵ Map X.

nance of 1813, leaves one hundred and seventy thousand dollars or sufficient with the two hundred and twenty-five thousand dollars temporary loans and the two hundred thousand dollars stock to make up the four years' deficit of six hundred thousand dollars. Nevertheless the two hundred and twenty-five thousand dollars was still a debt, and to buy the ground for Fulton Market, as much more was borrowed.¹ Increased taxation only met current expenses; the time was unfavorable for land sales; and those of 1818-19 had not escaped criticism, judging from the elaborate report of the comptroller in 1820, ordered to be printed for distribution and explaining and justifying the financial policy of the preceding four years. Accordingly four hundred thousand dollars worth of five per cent. city stock, payable in 1850 and 1851, was issued; two hundred thousand dollars in July, 1820, and two hundred thousand dollars at three per cent. premium in May, 1821.

¹ "Acquired Jan. 12, 1821. Consideration \$216,284.60." Comptroller's real estate index.

6. 1822-1843.

STEADY CONSERVATION OF REMAINING MUNICIPAL LAND, WITH RESTRAINT OF DEBT TILL 1834, AFTER WHICH EXPENDITURE ON CROTON AQUEDUCT PREPARES THE WAY FOR THE POLICY OF 1844.

There were now in reserve four hundred and eighty-four acres of the common land. Between May, 1823, and January, 1827, four hundred and eighty acres of this would be available for sale. It had been the expectation, and continued to be as late as 1823, that these lands would so enhance in value by the time the bulk of the six per cent. stock fell due, December 31st, 1826, that they might be sold to advantage and the stock taken up with the proceeds. With this view the stock of 1812 had been made payable just after the bulk of existing leases would expire, and leases made thereafter had been limited to the same period. The real estate market, however, continued too depressed between 1823 and 1827 to warrant sales of unimproved land, so that comparatively few of the five-acre lots were at this time parted with. Of the ninety-three lots shown on Ludlam's atlas of 1821 as then belonging to the city, fifty-two were leased again, but only till 1833, at an average of thirty dollars each per year as against ten dollars in 1803; three were leased for twenty-one years; twelve or thirteen were held idle; as many more were worked by the almshouse; and twelve were sold in fee.

These were lots 115, 121 and 181 for four thousand dollars; lots 95, 89, 77 for two thousand five hundred dollars and a quit-rent commutation of four hundred dollars; lots 107, 109, 183 and 101 for four thousand five hundred dollars; lots 67 and 83, for one thousand five hundred dollars each, and a quit-rent. In 1827, by exception, one of the fifty-two leased lots, namely, lot 110, "little more than a mass of rock," was also sold for two thousand five hundred and fifty dollars.

Since the sales of 1796 and 1801, the only interference with these lands had been by way of resale, exchange, or for exceptional reasons, as follows:

1802. Lot 119 to John Titus, he paying one hundred and fifty dollars and giving back to the city lot 128.

1804. Lots 54, 55, 60 and 61 to Dr. David Hosack for a botanic garden, price four thousand eight hundred and seven dollars and the usual wheat quit-rent.¹

1804. Lot 80 with the usual reservation of a wheat quit-rent for thirteen hundred and twenty dollars. This was one of the alternate lots marked to be sold in 1796, but was omitted from that sale and also from the resale of 1801.

1804. Lot 168, with the usual reservation of wheat quit-rent, for one thousand dollars.

1804. Lot 74, in the same way, for one thousand five hundred dollars.

1806. Lot 160, for nine hundred and forty dollars.

These three lots were of those sold in 1796 but not claimed, and were omitted from the resale of 1801. In 1796 they brought three hundred and thirty-five, one hundred and eighty-five and two hundred and forty pounds respectively, one pound being equivalent to two dollars and fifty cents.

1808. Lots 102 and 103 to the people of the state of New York, as already noted, for seven hundred dollars.

1808. Lot 110 reconveyed to the city for two thousand dollars, in order that the two hundred and fifty feet park-way through Hamilton square might be continued to Fifth avenue. In 1796 it sold for three hundred and five pounds, but was not

¹Map V. Through the exertions of Dr. Hosack these were taken of him by the state under the law of 1810, and in 1814 given to Columbia College. They lie between Forty-seventh and Fifty-first streets, Fifth avenue and a line about one hundred feet east of Sixth avenue. The college still owns all the street lots and about one-fourth of those on the avenue. It has naturally received the attention of Single Tax advocates, one of whom, writing for their organ *The Standard*, estimates the value of the college lots to-day, perhaps too generously, at four million dollars.

claimed, and was resold in 1801 for four hundred and ninety dollars.

1809. Lot 205 sold for fifteen hundred and fourteen dollars. This lot was a portion of the tract east of Third avenue which was held back from the sale of 1796 at the request of adjacent owners and for the most part bought by them at a valuation fixed by the city. In 1809 the adjacent owner was allowed to purchase it at the valuation of 1796, namely one hundred and sixty pounds per acre.

1810. Lot 138 to James Scott, he paying two hundred dollars and reconveying to the city lot 137.

1810. Lot 84 reconveyed to the city by Dr. Hosack.

1818. Lots 125, 128, 131 to Robert Lenox, he reconveying to the city lots 167 and 169 which he held of the city on lease, and lots 166 and 168 which he owned in fee, and paying five hundred dollars.

1823. Lots 48 and 96 reconveyed to the city.

A like conservative policy was pursued in regard to the down-town lots. Most of them were on leases which expired in 1825, 1826 and 1827, and of all that belonged to the large tracts hitherto considered, only a few were sold between 1819 and 1840. The extension of Anthony street to Little Water cut the largest remaining gore of the Collect lots into eligible halves,¹ and these were sold in 1825, the one for one thousand three hundred and fifty dollars, the other for six hundred and thirty-nine dollars. The same year the western triangle of the powder house lots fronting Pearl Street was sold for twenty-five hundred dollars. These were all of such lots that the city parted with until 1832, and then only two more were sold, namely, lot 4 of the powder house lots for two thousand five hundred dollars, and lot 5 for one thousand seven hundred and forty dollars. Another, the easternmost and last of the powder house lots, after Centre street had been opened through them, was sold in 1838 for five thousand dollars. This was all

¹ Map VIII.

again until 1840, although the extension of Collect street as Centre street to Chatham, absorbed a number of corporation lots on Tryon Row and Augustus street.¹

The great bulk of these lots, as the leases fell in, were again leased for twenty-one years. The advance in rents was general, though not quite uniform. The ruling rate for lots on the south side of Chatham street in 1806 was two hundred and fifty dollars, for those on the north side two hundred dollars. In 1827, lots 116 and 117 on the south side were leased for four hundred and fifty dollars each and lots 2 and 6 on the north side for four hundred dollars each. Lots on William street which in 1806 rented for one hundred dollars were renewed in 1827 for one hundred and seventy-five dollars; numbers 1 and 2 of the powder house lots which rented in 1811 for seventy-five dollars and one hundred and thirty-five dollars, were renewed in 1832 for one hundred and seventy-five dollars each, while numbers 4 and 5 adjacent were sold the same year, as already noted, for two thousand five hundred and one thousand seven hundred and forty dollars. They had rented in 1811 for one hundred and fifty dollars and one hundred dollars respectively.

Meanwhile the maturing six per cent. stock had to be provided for. From December, 1822, to December, 1825, the floating debt had been slightly diminished to one hundred and twelve thousand dollars, so that the normal increase of the sinking fund was working an actual decrease of the debt. To swell the fund and so reduce the amount inevitably to be borrowed when the six per cents. fell due, all water lot quit rents, and not merely those from grants prior to January, 1804, were allowed in 1825 to be commuted, but at five per cent. instead of six; and it was voted to carry to the sinking fund all the proceeds of sales of corporation real estate subsequent to January, 1825. From 1822 on, also, the new Fulton market had returned a substantial sum in fees and rents. Even with these helps the sinking fund on the first of

¹ Map VIII.

January 1826, was two hundred and twenty-five thousand dollars short of the seven hundred thousand dollars due the following December, though it exceeded by seventy-five thousand dollars Comptroller Mercein's estimate of 1812, and one hundred and thirty thousand dollars of it was in fives of 1820 and 1821.¹ Resort was therefore had to temporary loans, and to retire the last of the six per cents., three hundred thousand dollars new fives payable in 1850 were issued in December, 1828, at $4\frac{1}{2}$ per cent. premium, under the act of 1826.²

As early as 1826 the Bellevue establishment, "proud" though it had been termed in 1812, was already outgrown and unhealthy. The new state's prison at Sing Sing was then building, and it was thought that the old one at Greenwich, foot of Christopher street, might be made use of by the city. An agreement was therefore made with the state to take it on the completion of Sing Sing for one hundred thousand dollars. By the time the state was ready to give up possession, Blackwell's Island had been determined upon as the better site, and the purchase made in 1828 for thirty-two thousand five hundred dollars. Nevertheless the city held to its bargain for the prison property, borrowed the money to pay for it, and the next year, 1829, divided it into lots. Its extent was about six acres, including the wharf, and it made one hundred city lots.³ These were sold at auction in April 1829, to thirty-six purchasers, for an aggregate of one hundred and twenty-eight thousand dollars. It was a profitable speculation, like that of the government house lots, rather than an administration of the city's proper estate, but it helped materially in the erection of the new penitentiary at Blackwell's Island, which was

¹ I have not found in any one place, a complete set of the comptroller's reports even for 1830 and after. Earlier reports were not printed as public documents. They occur, but not regularly, in the minutes of the common council. The comptroller's report for 1826, and with it the report of the sinking fund, are of those not entered.

² Comptroller's report 1830.

³ Map XII.

pushed with such energy that the removal from Bellevue was made in October, 1829. It was none too soon. An epidemic, in which the eyesight of numbers of children was sacrificed, broke out in the Almshouse in 1830, and forced the purchase of Long Island farms, two hundred and fifty acres, at Newtown, and the removal of the children thither.

The ten years 1825 to 1835, as subsequent to the opening of the Erie and Champlain Canals, were years of rapid growth in wealth and population. Real estate increased from fifty-two to one hundred and forty-two millions assessed value,¹ population from one hundred and sixty-six thousand to two hundred and seventy thousand. In correspondence with this growth the great public work of the time, particularly after 1830, was the closing of many of the old streets and lanes and the opening of new streets and avenues, as laid down by the commissioners under the law of 1807. After Third avenue, the first of the new streets to be opened² through the upper commons was Forty-second street in 1831. In 1835 Seventh avenue and Sixth avenue were opened; in 1836 Fifth, Madison and Lexington avenues, the last two only to Forty-second street; also Eighty-ninth, Ninetieth and Fiftieth streets from Third to Sixth avenue, and Twenty-ninth to Forty-first inclusive.³ The opening of cross-streets through the upper commons was much delayed by controversies which arose on account of the new streets not coinciding with the streets above Forty-second on the map by which the common lands were sold in 1796. That map showed streets uniformly of sixty feet wide, but the commissioners' map of 1813 made Forty-second, Fifty-seventh, Seventy-second, Seventy-ninth and Eighty-sixth streets one hundred feet wide, so that there was overlapping of the new streets beyond the lines of the old ones,

¹ Proceedings of the Common Council, March, 1836.

² By opening is here meant the final determination of awards for land taken, not the opening of a street for travel.

³ Valentine's Manual for 1857, p. 529.

until above Seventy-ninth street the old lots were cut fairly in two.¹ With some of the owners the corporation arranged to give and take corresponding slips; with others no agreement could be reached until the law of 1836 gave to commissioners, "in all cases which may be submitted to them" the power to determine whether and what pieces should be mutually conveyed by the corporation and individuals, and on what terms. The next year the following streets were opened through the commons: Forty-third to Fifty-seventh and Eighty-seventh to Eighty-eighth inclusive; and from Eighty-third to Eighty-fifth inclusive, between Third and Fifth avenues.

Probably on account of this uncertainty over boundaries, only five of the fifty-two lots, the leases of which expired in 1833, were leased again in that year, though meanwhile two others had been leased for twenty-one years in 1832. After 1833 and until 1842 only six more were leased, none of them longer than to 1846. Beginning with 1842 the lots were let out in bulk from year to year in anticipation of sales on account of the sinking fund. Not one had been sold since 1827.

The sales on account of the sinking fund, which began on a large scale in the year 1844, were resolved upon in consequence of fiscal conditions hitherto unknown to the city. These, again, were the outcome of an undertaking really vast for that time, the Croton Aqueduct. For forty years previous to 1835 it had been a mooted question whence a supply of water was to be obtained for the New York of the future. Several large schemes had been brought forward and abandoned. Begun at last in 1835, with the expectation that it would cost five millions, the Croton Aqueduct was not finished until 1845, after an expenditure of thirteen millions. It was accompanied by a series of smaller undertakings which in themselves were sufficient to absorb the accumulations of the sinking fund and any surplus after other expenses were met. According to the city debt, which in December, 1834, was, 'all

¹ Maps V. and VI.

together, seven hundred and forty-five thousand dollars, had increased by December, 1843, to thirteen million six hundred and seventy-five thousand one hundred and thirty-four dollars. These minor extraordinary expenditures were principally for:

The Tombs, fifty-nine thousand dollars in 1835, two hundred and sixty-one thousand five hundred dollars in 1837.

Randall's Island, 1835, sixty thousand dollars.

Ground for markets, 1835, thirty-eight thousand nine hundred and fifty dollars.

Lumber Dock, 1835, twelve thousand dollars; 1837, sixty thousand dollars.

Lunatic Asylum, 1837, sixty thousand dollars.

In addition, the city was obliged to pay three hundred and sixty thousand dollars damages for blowing up buildings to stop the great fire of December, 1835. Other expenditures which swelled the debt, but only to furnish later the means to diminish it, were:

Fifty-three thousand dollars 1834-1835, for filling in one hundred lots at Bellevue.

Twenty-seven thousand seven hundred and sixty dollars in 1834-1835, for filling in forty lots at Fort Gansevoort.

The current funds for this outlay were obtained by the issue of five hundred thousand dollars building stock in 1837-1838; and of three hundred and sixty thousand dollars fire indemnity stock; and by temporary loans which in 1840 were funded to the amount of four hundred thousand dollars. The water stock outstanding December, 1843, was twelve million two hundred thousand dollars. On eight hundred thousand dollars of it issued in 1842, the city was obliged to pay seven per cent. interest. It was clear that its credit was suffering under the load, and needed more adequate provision for paying so great a debt as it should mature. Under these circumstances the ordinance of 1844 was passed. The important seventeenth section is as follows: "The commissioners of the sinking fund are hereby authorized to sell and dispose of

all real estate belonging to the corporation and not in use for or reserved for public purposes, at public auction, at such time and on such terms as they may deem most advantageous for the public interest; provided, however, that no property shall be disposed of for a smaller sum than that affixed to the description of such property, under title fifth of this ordinance; and that at least twenty days' previous notice of the time and place of such sale, including a description of the property to be sold, be published in each of the newspapers employed by the Corporation."

Under this ordinance what was left of corporation land not used for public purposes passed into the control of the commissioners of the sinking fund, in trust expressly for the payment of the city debt. The bulk of this residue, not counting Long Island Farms, lay in the upper and lower commons and at Bellevue, with smaller but valuable blocks, where there had been reservation of water-lot grants, at Duane, King and Gansevoort streets on the North river, and at Peck slip, and Munroe market on the East river. On Map XVI., the shaded part shows the remaining corporation lots north of Forty-second street. Below Forty-second street were still forty-five acres of the upper commons, as may be seen on Map V.¹ Of the lower commons there remained more than half the original lots left after the settlement of boundary disputes.² The Bellevue establishment had been entirely removed to the islands, leaving there two hundred and eighty-three eligible city lots,³ and there were seven still left at Peck slip. Of the King and West street block only one lot out of twenty-six had been sold.⁴ The Duane, Gansevoort and Stanton street or Munroe market lots were not yet productive, and need only be named.

¹ Lots 16, 17, 18, 21, 22, 25, 26, 31, 32, 33.

² Map XIV. The lots sold are shaded.

³ Map XV.

⁴ Map XIII.

After more than a century and a half, therefore, the city still had left, besides the Bellevue property acquired by purchase, no inconsiderable portion of the estate above high water mark received under the Dongan Charter. That estate in its various parcels as heretofore referred to, and including the Harlem commons, comprised more than one-seventh of the whole upland, including its choicest part.¹

Previous to the ordinance of 1844, the disposition of the city property had rested solely with the common council, which carried its resolves into effect generally through the agency of its finance committee; in routine matters, of its treasurer; and later of its comptroller, first appointed in 1802. The comptroller's reports and recommendations were customarily referred to the finance committee, on whose advice, on the comptroller's or its own motion, the board passed its resolves. By the charter of 1830 the assistant aldermen were made a separate chamber and the mayor was given a veto which, however, could be overruled by a majority vote in each chamber. Measures could originate in either chamber, and took effect on a majority vote in each, followed by the Mayor's approval or ten days' inaction. There was no restraint on alienation in any way the common council might choose. After the ordinance of 1844, the common council confined itself to directing special conveyances, sometimes to individuals or corporate bodies, at prices to be fixed by the commissioners of the sinking fund, sometimes to institutions gratuitously.

The sinking fund commission used its new powers vigorously, and by large sales, principally in 1844, 1845, 1848, 1850, 1851, 1852, 1857, 1866, converted the greater part of the estate intrusted to it into current funds, and applied them to reduce

¹ The present acreage of the island is given at the tax commissioners' office as twelve thousand four hundred and thirty-two: but of this about two thousand four hundred acres have been filled out into the rivers. The parcels heretofore referred to and not including water lots aggregate one thousand four hundred and fifty acres, one thousand six hundred and fifty and over if probable encroachments be reckoned.

the debt. The sales-maps and accounts are on file in the comptroller's office,¹ and with the comptroller's reports and contemporaneous records of the common council, constitute the chief material for continuing this account to the present time.

The story of the sales between those already described and those by the commissioners is soon told, so far as concerns the larger blocks to which this account is confined. Few and, except in one case, unimportant, they are here referred to only that a complete view may be had of the disposal of the parcels to which they belong. The special circumstances attending each sale have not been inquired into, so that a tabular statement merely is subjoined. It will at least go to show that the city record of transactions in common land is complete and accounts fully and properly for all there was to dispose of.

1840. A Peck slip lot, west corner of Front street, fifty-five by twenty-five, to lessee, eight thousand dollars. It had been leased in 1828 for twenty-one years at three hundred and seventy-five dollars yearly.

1841. At Albany basin, a strip seventy-eight feet deep, in west front of the lots sold in 1818,² forty-six thousand two hundred and fifty dollars.

1842. A Collect lot, No. 1, twenty-five by ninety, corner of Elm and Leonard streets, four thousand eight hundred dollars.³ The lot fifty feet by forty on southwest corner opposite sold in 1805 for six hundred dollars.

1842. The first of a hitherto intact block of twenty-five lots bounded by King, Charlton, Washington and West streets. It had been reserved in granting the water lots, and was the fifth block along the North river, which the corporation had

¹ To the courtesy of Comptroller Myers, I am indebted for the opportunity of ample access to the maps and records in his office.

² Map XI.

³ Map VIII.

filled in for sale.¹ It was leased in 1837 for ten years at four thousand and fifty dollars annually. Price of the one lot, thirty feet by seventy, five thousand six hundred dollars.

1842. Lower commons, lot 20, as on Map XIV., three thousand five hundred dollars.

1843. Lower commons, lot 6, eight thousand five hundred dollars. Leased in 1825 for twenty-one years at five hundred dollars yearly.

This brings us to the sales by the commissioners of the sinking fund.

¹ Map XIII.

CHAPTER III.

ENCROACHMENTS.

In the history of municipal land ownership, as is well known, encroachments are conspicuous. To what extent have they been made on Manhattan Island? The limiting words of the Charter of 1686 are "all vacant, waste and unpatented lands." It was from the start the practice of the common council in any case of suspected encroachment to require a view of the patent under which the land was held, and to claim so much as it did not cover to be the property of the city. Several instances have already been noted where claimants of ground between low and high water were summoned to show title by their patents. So it was with the upland. In the case of a tract at the junction of the Post and Bloomingdale roads, shown on Goerck's map¹ as belonging to Casper Semler, the patent under which it was held was demanded as late as 1757, and on its appearing that the patent gave one hundred rods along the Post road and fifty rods back, while by an error of an early surveyor fifty rods had been taken on the road, and one hundred rods back, a settlement was entered on the minutes of the common council whereby the occupant retained his ground as it was, save a gore which he gave up not to overrun the Bloomingdale road, receiving an equivalent gore in return.

By laying down correctly the original patents, up to 1686, the lines of the city's property could be accurately determined. This, however, was not practicable below Wall street, as Valentine's attempt has shown. From Wall street

¹ Map V.
(65)

as far north as the junction of the Post and Bloomingdale roads, except the shore, the common council seem not to have succeeded in their attempts to reclaim ground already in occupancy, and even that which they gave to Sir Peter Warren on Broadway, though unoccupied, was contested by an adjacent owner. Above the junction to the Harlem line the patents are large and well defined, and there can be little doubt what the city ought to have received under the Charter, admitting its right, which does not seem to have been gainsaid, to all unpatented land. On the east the Harlem line, as set forth in the Nichols patent of 1666, is a definite boundary. The controversery with Harlem freeholders over their indefinite right of commonage west of it, and its outcome, have already been noted. Beginning at the Harlem line, the western boundary of the commons is for some distance the eastern line of Theunis Ides' land, run in 1690, the town of Harlem paying for part of the survey. This line extended from One hundred and seventh to Eighty-ninth street, about half way between Seventh and Eighth avenues.¹ It does not seem to have been questioned by the city of New York, though I find no mention of the patent under which it was held.

South of Ide's land a single patent extends to Thirty-ninth street, on the river to Forty-second, "from the said river stretching in depth and breadth two hundred and fifty rods." A line at all points two hundred and fifty rods inland from Hudson high water mark, as shown in Randel's maps, would fall half a block on an average short of the commons line, as held by the city, from Eighty-ninth to Seventy-first streets, and indicates an encroachment of that extent. From Seventy-first to Sixty-fourth streets the two lines would nearly coincide. From Sixty-fourth to Fifty-fifth the apparent encroachment would be about one block or eight hundred feet against the city, and a block and a half against the city from Fifty-fifth to Forty-third street. Below Forty-third street the

¹ Map II. Compare Map XVI.

Bloomingdale road is the actual and apparently the true line of the commons. This calculation would show a possible encroachment of say one hundred and eighty-five acres into the commons on the west, south of Theunis Ide's land. The common council does not seem to have been aware that two miles and a half along the Hudson and bordering the commons were held under the same patent, but appears to have taken contemporaneous deeds as conclusive.¹ Thus there is record of an agreement in 1749 with Oliver De Lancy, holder or co-holder under the patent through several mesne conveyances of the tract west of the commons from Fifty-seventh to Sixty-eighth streets, whereby he is to have his land surveyed and pay three pounds an acre for any he may possess that properly belongs to the commons. A committee made the survey and the deed was ordered, though it does not seem to have passed, but no mention was made of an original patent.

On the east side, the line of the commons for the greater part of its length was kept quite rigorously up to the true line of the patents. Tuttle's maps show scarcely any discrepancy from Seventy-eighth street, where the commons ranging along the Harlem line would first touch the rear of the East river patents, as far as Sixty-seventh street. From Sixty-sixth to Forty-eighth street they indicate an encroachment varying from one hundred and fifty to five hundred feet. Below Forty-eighth street to the Bloomingdale road, the old post road is either approximately or exactly the limit of the patents, and there is no encroachment beyond it. Minutes of controversies

¹ The early deeds cite the patent and give the distance from the river as two hundred and fifty rods. Joseph Haynes, who held the southmost fifth of the patent at his death in 1763, occupied only two hundred and fifty rods, or to the Bloomingdale road, from Thirty-ninth to Forty-ninth streets, and he had his land surveyed by the city surveyor in 1760. See 42 Conveyances, p. 49. For the tract north of him to the De Lancy line, deeds recorded in 1727 and 1761 give two hundred and fifty rods only. See "Tuttle's Abstract of Farm Titles in the City of New York," p. 200 and p. 329. Tuttle is mistaken in saying, p. 46, that the deed to Joseph Haynes gives distances which would extend his tract east of the Bloomingdale road. See 42 Conveyances, p. 27.

with owners all along the East river side of the commons occur frequently in the records of the common council previous to 1790. In some cases a survey showed that land uninclosed was really within a patent; in others land was given up by private occupants, ten acres by three different persons in 1773.¹ The six-acre lot and the one-acre lot shown on Goerck's map were sold by the city to the holders in 1792. Subtracting these from the amount of possible encroachments as shown by Tuttle's map, would leave approximately thirty-five acres as the probable loss to the city on the east side. Two hundred and twenty acres then is the upward limit of encroachments on the whole upper commons, or about one-sixth of the unpatented land there.

In the vicinity of the lower commons the city was itself the encroacher and was obliged to relinquish, as has been noted, portions of the negroes' burying ground and certain lots adjacent.

An attempt was made in 1758-60 to assert the city's title to portions of a large tract surrounded by the Bowery lane and Bloomingdale road, the cross road leading thence to Great Kills, the road from Great Kills to Greenwich lane, and the Greenwich lane in its extent from the Great Kills road to the Bowery lane. Bowery lane is the Bowery; the Bloomingdale road its continuation in Broadway; the creek called Great Kills was the southern boundary of the eight hundred rods patent already referred to; the road from Great Kills to Greenwich lane, known as the Fitzroy road followed approximately the line of Eighth avenue from the cross road to Greenwich lane, the Greenwich avenue of to-day, which was then continued to the Bowery at Astor Place; the cross road met the Bloomingdale road at Thirty-ninth street, and the Fitzroy road at

¹ Litigation over the division line on the east side from Forty-eighth to Fifty-seventh street was begun in 1838 and continued till 1867, when the city paid eighty-four thousand four hundred and nineteen dollars for a quit claim deed fixing the line there as in Map XVI. Comptroller's report, 1845, p. 35; and 992 Conveyances, p. 536.

² Map III.

Forty-second street.¹ In the common council minutes of July, 1760, there is an elaborate report in regard to the ownership of this tract, and there is described "a large central vacancy, but how far, for want of further discoveries which can only be made by tedious researches after old patents in the secretary's office, or whether the same extends quite to Greenwich lane, we cannot as yet say—which vacancy, from what we have hitherto discovered, is occasioned by two tiers of patents, the rears of which do not meet each other. How this vacancy came to be left out of the adjoining patents we think is easily determinable if it be considered that the aforesaid vacancy is an entire swamp, which sort of land it is well known was not anciently esteemed worth patenting." The committee were instructed to sell or lease what encroachments they found on a closer survey, as they should think best. It is possible that patents were found covering the whole of the tract, since there is no later record of conveyances. The incident shows the usual procedure of the corporation in ascertaining what lands it owned under the Dongan Charter. The custom was to claim all uninclosed land until patents were produced for it. Where there was suspicion that inclosed land was so by encroachment the usual practice was to demand a view of the occupant's patent. There is no record of any attempt systematically to ascertain the lands to which the city was entitled by its charter, by compiling the original grants in the secretary's office. Hoffman has done this below the line of Houston street, the Bowery, and Greenwich lane, to Wall street and Battery Place. Tuttle and Riker show it from Thirty-ninth street up. The intervening tract in which the "vacancy" just described lies has not yet been accounted for to the extent of citing and plotting out the original patents.

¹ This tract is shown in relation to present streets and avenues on the map faces p. 379 of Valentine's History of the City of New York.

CHAPTER IV.

GRANTS TO INSTITUTIONS AND CORPORATIONS.

ANOTHER matter like that of encroachments at all times of interest in the history of municipal landownership, is that of grants to institutions and corporations. The list of such grants of upland on Manhattan Island down to 1844 is as follows:

1691. Dutch Church. Lot one hundred and eighty feet by eighty-four on Garden street, now Exchange Place, for a church or for pious and charitable uses. Consideration fifty-four pounds.

1703. English or Trinity Church. "The new burying ground three hundred and ten feet front on Broadway, to be used as a church yard and burial place forever." Consideration nominal.

1766. Reformed Protestant Dutch Church. Twenty-eight lots of lower commons, the same not to be converted forever after to private uses. Perpetual lease, rent seventy pounds annually. Condition released for one thousand pounds in 1790.

1766. English Presbyterian Church. Block now occupied by Times and Potter buildings, not to be applied to private or secular uses. Perpetual lease, rent forty pounds annually, reduced to twenty-one pounds and five shillings on petition in 1785. Condition released in 1856, the city receiving sixty-seven thousand five hundred dollars.

1797. People of the State of New York. Two acres at junction of Post and Bloomingdale roads for the use of an arsenal, to revert to the city when abandoned for said purpose. Consideration nominal. The state made no use of the prop-

erty. By act of legislature it was restored to the city, and in 1807 granted to the United States on similar terms.

1808. People of the State of New York. Lots 102 and 103 common lands. In 102 the city had a right only to a wheat quitrent. Lot 103 was on lease which would expire in 1823. For its whole interest the city received seven hundred dollars. The arsenal building erected by the state still stands in Central Park.

1808. Free school society. Free use and occupation of building forty feet by one hundred and nineteen, corner of Chatham street and Tryon row, and of its site as shown in Map VIII. The lot is described as the arsenal site on Tryon row released by the State of New York to the corporation. Condition to occupy the premises for the uses of the institution, and to educate gratuitously the children belonging to the city almshouse.

1808. People of the State of New York. Collect lots north of Sugar Loaf street, and between present Centre and Elm,¹ one square and part of another, for arsenal, laboratory, work shops and ordnance yard, so long as the same should be used for military purposes and no longer. Consideration nominal.

1810. Manumission society. Lots 107 and 161 William street,² in trust for school purposes, with condition to build within a limited time. The lots were on leases which the school bought in, and then the corporation remitted the rent. Consideration nominal.

1810. Trustees Brick Presbyterian Church. Lot 21 Augustus street, for charity school, otherwise to revert. The trustees failing to build in three years, as conditioned, were granted an extension till after the war. In 1816 their petition "to erect buildings ornamental to the city and profitable to the church" was refused and the lot re-entered.

1824. Society for reformation of juvenile delinquents. One

¹ Map VIII.

² Map IV.

acre in front of the United States arsenal grounds, junction of Post and Bloomingdale roads,¹ and the city's interest in said grounds, for a house of refuge for juvenile delinquents, on condition that the society obtain a conveyance from the United States of its interest in the premises, both lot and buildings, and that these shall at all times be used for said house of refuge. Fifth avenue was afterwards opened through the premises, on which account, in 1837, the society was given a lease of five hundred feet in depth of the block between Twenty-third and Twenty-fourth streets, First avenue and Avenue A, with the buildings thereon, being the old fever hospital of the Bellevue establishment, on condition that it execute a release to the city of its former premises and use the new site for no other purposes than those for which the society was incorporated.

1827. Institution for the instruction of the deaf and dumb. One acre of lot 59, common lands, in fee, consideration nominal. The institution had received ten thousand dollars from the state and a lease of the whole of lot 59 from the city for twenty-one years, at seventy-five dollars for the first fifteen years and one hundred dollars thereafter. Under the act granting the ten thousand dollars, the state comptroller refused to accept leased grounds as a site, whence the grant in fee of one acre. The institution held other portions of lot 59 and also part of lot 56 under various leases till 1850, when, by the direction of the common council, the sinking fund commission sold it both lots, except the one acre already conveyed, for twenty-eight thousand dollars.²

1828. New York Dispensary. Lot fifty feet by ninety of the state ordnance yard, corner Centre and White streets.³ The legislature had released this parcel to the city to be so conveyed. The widening of Centre street took twenty feet off

¹ Map VII.

² Map XVI.

³ Map VIII.

one side of the lot, which was added on the other in 1837 by grant of the state and city, as in 1828.

1830. Northern Dispensary. Triangle, fifty-one feet by seventy-two by sixty-two, Sixth street, near Christopher street; so long as used for the purposes of the dispensary. Consideration nominal.

1842. Association for the benefit of colored orphans in New York City; two hundred and fifty feet in depth from Fifth avenue of lot forty-two, common lands, upon condition to build in three years and to maintain twelve colored pauper children from the city almshouse, if so required; the inmates to be taken from and to belong to the city. Consideration nominal. In 1848, when the commissioners of the sinking fund sold the rest of the block at auction, the Association bought four city lots for two thousand and ninety dollars, thus extending its premises to a depth of three hundred feet from Fifth Avenue. In the draft riots of July, 1863, its building, which had cost about seven thousand dollars, was burned down. For this and other losses it then suffered, the Association received from the city seventy-three thousand dollars. In 1865 it sold its land for one hundred and seventy thousand dollars. New grounds were purchased at One hundred and forty-third street and Tenth avenue for forty-five thousand dollars, and the large building that now stands there erected.

CHAPTER V.

COMMENT AND CONTROVERSY.

THE reflection is unavoidable whether this vast property had been administered up to 1844 with a fair regard to the city's interest, even from a practical point of view; that is, from the standpoint not of what would have been best, but what was well. Passing over an apparent apathy as to encroachments on the west side and into the "large central vacancy" of 1760, for lack of data as to what certainly took place there, the most questionable transactions from such a standpoint are the sales of 1789 and 1792,¹ when two hundred and forty acres of the commons, equal to forty-eight full city blocks, were sold in bulk as farm land to ten purchasers at less than sixty-five dollars per acre. These sales were not up to the standard of either earlier or later administrations. To be sure the nearest of this land was three miles from the city, but the city had over thirty thousand people, an increase of at least thirty per cent. in three years. The only excuse seems to be a natural anxiety to recoup losses after a long war. After these sales till 1844, with minor exceptions again after war, the administration of this public trust was conservative and judicious. The policy adopted in 1796 of selling alternate sections of the commons and holding on to the rest, was carried out faithfully, and the rise in value of the unsold lots awaited for fifty years. In selling the Collect lots one full square, the site of the Tombs, was reserved to the city; and a square and a half was granted to the State under such conditions that it is available for municipal purposes to-day, saving the city at least a million of dollars in the cost of its new criminal

¹ These are the dates of the contracts, not of the deeds.

courts building. The authorities were even sharp speculators for the city's interests in the purchase and sale of the government house and state's prison lots. The proceeds of sales were not dissipated in current expenses, but used directly or through the sinking fund to pay for permanent improvements.

If the standpoint be changed, and it is asked what disposition of these acres would have been the best possible for the permanent welfare of the city, the question becomes one of theory, and there will be various answers. Some stock arguments against municipal ownership are not borne out by the city's experience. Up to 1844 there had been neither a dishonest nor a fickle administration of the municipal estate. Governments, parties and officials changed, but there is a distinct continuity of fiscal policy, so far, at least as relates to corporation land. It would seem that underneath the tossing surface of politics there were deep economic interests of which political dynasties are the servants and not the masters, and which secure the retention to old age of not a few experienced officials, even under a system by which the spoils belong to the victors.

On the other hand, the contention that municipal ownership and the leasehold system made necessary by it are relatively unprofitable, and unfavorable to improvements, is sustained. Improvements would hardly be undertaken on a shorter lease than twenty-one years, and on its twenty-one year leases as sold at auction the city got no fair return on the average selling value of its property for that time.¹ Neither were the structures put up creditable. Nearly all were but two story and attic brick buildings, the minimum required by the leases.

In new communities at least, private ownership in fee seems to be required to encourage improvement, and so far as it does encourage it, benefits the community generally. Were we com-

¹ There is considerable evidence for this statement in the prices and rentals heretofore quoted. The revenue items in Table B appended are to the same effect.

mon owners again of the ground under the Potter and Times buildings, and it stood vacant, it would be better policy to give it to men who would put up those buildings than rent it to others who would improve it in the ordinary way. Every branch of trade and many classes of workers would share in the benefit. Exclusive private ownership has this advantage, that under the stress of its competition those who are in general best able to improve the land get it. It is also true that some of these, thanks to the practice of assessing vacant lots for purposes of taxation lower than improved property of the same value, find it more congenial not to use their power, and buy merely to sell again, or for various causes do not half utilize their holdings. This is the vice of the system, but it is a curable one.

Already there is in New York City, for example, perceptibly less favoring of vacant lots in making up the tax list; and it is to be expected that such favoritism, inherited from a time when municipal taxes and expenditure were comparatively insignificant, will not last much longer. To tax them an extra fifteenth, as Stuyvesant once did, would no doubt be crude treatment, but certainly not worse adapted to present conditions than the bounty now in effect extended to them as compared with improved property. It is a familiar conception that nothing economic is so beneficial to a community as to have every one at work and utilization everywhere. When this conception dominates taxation so that utilities are not discouraged nor non-utilization encouraged, the real merits of private ownership of land will be much more apparent; and they are poor defenders of it who in the case of city land still stand by the old notion (harmless enough when local taxes were low, land cheap, and every one had already more work than he could do) that because valuable land is held idle, for that very reason it should be exempt or taxed at a minimum valuation, but that the moment it is improved and so begins to do some good, both it and the improvements may be assessed at the

maximum valuation, from sixty to one hundred per cent of selling value according to local custom.

If the view be correct that highest practical utilization carries with it greatest general benefit, and if the observation can be relied on that ownership by one and utilization by another do not conduce to a high grade of the latter, then both the leasehold and the speculative policy which were prevalent prior to 1844 must be considered less rational than the policy then inaugurated of getting the land into the hands of individuals and recouping through the increase of taxable property.

The chief consideration urged for municipal ownership of at least the suburban part of city land, is that thereby the community would profit by the increment due to its own growth and to improvements at its expense, whereas now private individuals grow rich without labor by selling to others as it were their place in the line. This "whereas" ignores the controlling fact that the man who has just sold his place in most cases paid a fair price for it to somebody before him, and therefore cannot be considered as having got something for nothing; it also takes no account of the effect to be expected from ceasing to favor vacant land on the tax list. The other part of the consideration adduced, must be weighed against the doctrine of assessments. Ever since the law of 1691, this doctrine has prevailed in New York City. Beginning with 1787, one law after another has added to the list of betterments the cost of which shall be met by assessments on properties benefited, until now even the cost of setting out trees along an avenue is so assessed.¹ The constitutionality of such laws was firmly

¹ The assessment for planting trees on West End avenue, from Seventy-third to One Hundred and Seventh street, was twenty-two thousand two hundred and eighty dollars. For the developed assessment system of New York City, see the consolidation act of 1882, and amendments, Ash's 1891 Edition. For list of laws that mark the stages to that act, see Gerard. That the system like every other governmental power may be abused, the experience of 1870-1880 is proof. From a statement presented by John Kelly, comptroller, to the assessment commission under the law of 1880, it appears that there were due the city April 30th, 1880, eight and one-half millions unpaid assessments. Eight and one-third millions of

held in decisions of 1831 and 1851 by the state court of last resort.¹

In the latter case Ruggles, J., said: "The attempt was made in the Convention of 1846 to abolish this mode of taxation. A standing committee was appointed to consider and report on the organization and power of cities and incorporated villages, and especially on their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit. The majority of the committee reported in favor of prohibiting local assessment for any improvements in a city or village unless on application of the majority of the owners of the lands assessed, and unless upon a two-thirds vote of the Common Council or board of trustees. The minority reported this section: 'No assessment for any improvements in any city or village shall be laid otherwise than by a general tax upon the taxable property of such city or village levied and collected with an annual tax for other expenses.' Debates in Convention, Argus Edition, p. 357. Both propositions failed, and the ninth section of the eighth article of the Constitution was substituted and adopted instead. The Constitution in this section recognizes and affirms the validity of the legislation by which city and village assessments for local purposes like that now in controversy are authorized; and seems to remove all doubt in relation to the legislative power in question."

Since, in virtue of the principle of assessment and the principle of the law of 1807, a map can be made one hundred

such arrears had been allowed to accumulate in the years 1870-1879 inclusive, on assessments aggregating twenty-five and one-fourth millions, of which also two and one-half millions had been vacated by the courts, making a deficit of nearly eleven millions in ten years. This state of affairs was a legacy from the Tweed regime, which coming effectually into power in 1869 projected vast and premature improvements, and by extravagance and fraud in various directions was chiefly instrumental in piling up the city debt from thirty-six millions in January, 1869, to a maximum of one hundred and twenty millions in December, 1876.

¹ The Mayor, etc., of New York *vs.* Livingston (8 Wend., 85), and The People *vs.* The Mayor, etc., of Brooklyn (4 Comstock, 419).

years in advance of a growing city; individuals warned that no compensation will be granted them for buildings put within street lines; the lands in the streets taken by right of eminent domain as fast as the growth of the city demands; the amount paid for them, and the entire cost of regulating, sewerage, and paving recovered by benefit assessments, the city paying assessments on its property the same as private owners: —it may fairly be questioned what more efficient system is possible, or what present injustice connected with private ownership of land in cities would remain to be remedied, were this system fully utilized and supplemented by an equal treatment of the owners of vacant and improved lots in the matter of taxation. Compared to the possibilities of municipal ownership with its buying and holding, and leasing or selling again after improvements made, the process just described, which differs only in degree from that even now followed in New York City, seems like the clearing-house system in banking, compared with the old-time operations of non-clearing-house finance.

APPENDIX A.

TABLE A.

August 21, 1820, the Finance Committee, preparatory to opening the Comptroller's books on a new system, report an inventory in full of city property, which, if arranged under the same heads as in Table B., stands as follows:

AVAILABLE FOR PURPOSES OF SALE.

Houses and lots, productive	\$405,200
Productive property at Brooklyn	62,150
Common lands, productive	119,150
Common lands, unproductive	37,800
Common lands, rent payable in wheat	2,650
Common lands, on perpetual lease, rent in coin	1,260
City lots, rent payable in wheat	5,200
Total	<u>\$633,410</u>

UNAVAILABLE FOR PURPOSES OF SALE.

Public wharves, piers and slips	\$842,257
Ferries, including necessary wharves	122,000
Lands and buildings used for public purposes	1,769,536
Total	<u>\$2,733,793</u>

The assessed valuation of other real estate the same year was \$52,063,858.

TABLE B.

Recapitulation of the real estate belonging to the City of New York, with the valuation thereof and the revenue derived therefrom, as submitted to the City Convention, in the year 1846, by John Ewen, Comptroller. Documents of the City Convention, p. 132.

AVAILABLE FOR PURPOSES OF SALE.

		Revenue.
Real estate for redemption of fire loan stock . . .	\$127,718.55	\$7,984.00
Bonds and mortgages pledged for redemption of fire loan stock	124,942.71	8,745.98
Quit rents, water grants, bonds, and mortgages . .	591,931.27	25,740.91
Sundry lots and gores.	246,540.00	
City lots under lease without covenants for renewal.	80,000.00	3,097.50
Miscellaneous property and rents in public buildings.	60,000.00	6,595.00
Lots at Brooklyn under lease without covenants for renewal	34,050.00	1,679.49
City lots under lease with covenants for renewal . .	271,000.00	8,741.25
Common lands.	1,078,500.00	1,606.74
Total.	\$2,614,682.53	\$64,190.87

UNAVAILABLE FOR PURPOSES OF SALE.

Real estate in use by fire department.	\$80,600.00	\$1,005.00
Real estate in use for market purposes	1,116,000.00	52,990.93
Piers and wharves in use for general purposes . .	1,472,300.00	73,782.00
Piers and wharves in use for ferry purposes . . .	224,500.00	51,695.00
Real estate in use for school purposes, land. . . .	90,950.00	
Real estate in use for school purposes, building . .	128,047.68	
Public parks and grounds	1,235,000.00	
Real estate in permanent use for city purposes . .	18,121,000.00	223,882.97
Total	\$22,468,397.68	\$403,355.90

The assessed value of other real estate the same year was \$183,480,534.00. More than half the value of the entire corporation property centered in the Croton Aqueduct, then just completed, and it is Croton water rent that makes up nearly all the last item of revenue.

TABLE C.

In the Comptroller's report for 1855 is a statement of the real estate then belonging to the city. Arranged as in Tables A. and B., it is as follows:

AVAILABLE FOR PURPOSES OF SALE.

Lots under lease	\$797,000
Sundry lots and gores	704,600
Lots at Brooklyn	15,000
Common lands	523,000
Uncommuted quit-rents and water grants yet to be issued	460,000
Total	<u>\$2,499,600</u>

UNAVAILABLE FOR PURPOSES OF SALE.

Almshouse department, including Blackwell's Island and buildings	\$1,700,000
Croton Aqueduct department	15,474,000
Police department	172,000
Fire department	298,000
Education department	1,555,800
Markets	1,176,000
Parks	13,984,369
Ferries	1,617,000
Piers and bulkheads	4,206,000
Total	<u>\$40,183,169</u>

The assessed valuation of other real estate the same year was \$336,975,866.

APPENDIX B.

THE accompanying maps were photo-engraved from tracings of originals as follows:

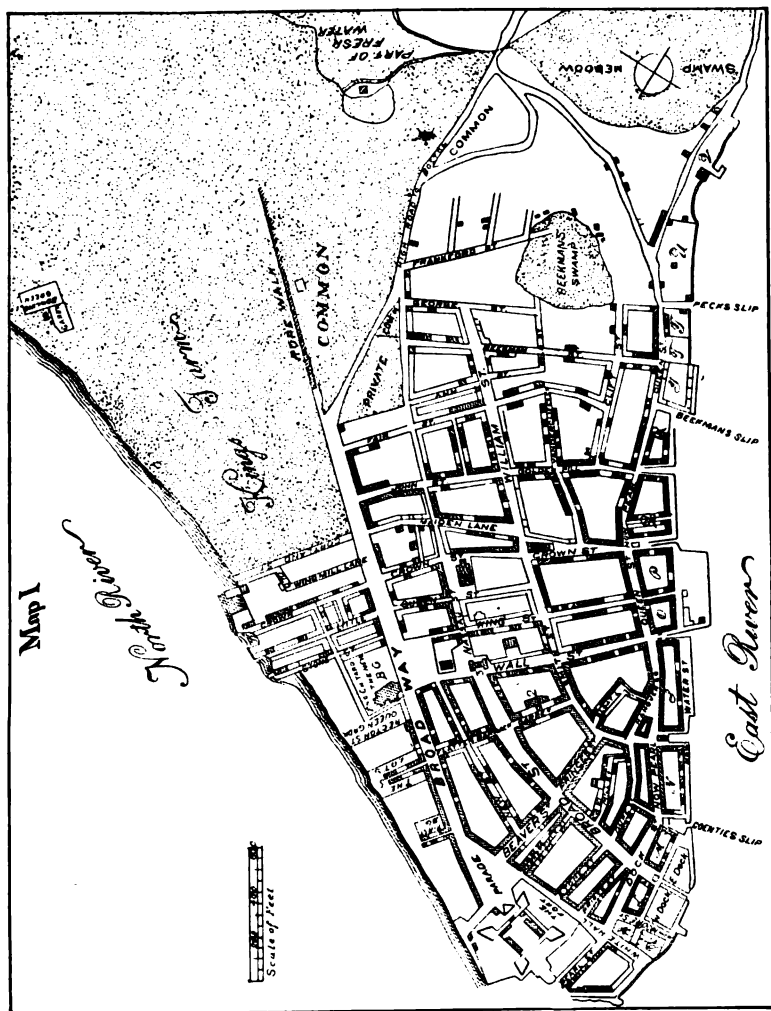
I. Fac-simile of Lynes' map of 1728. In the tracing, details of an ornamental nature, as also ward lines and names were omitted, and a number of lots referred to in the text designated by reference marks. See also note on page 14.

II. Map accompanying Riker's History of Harlem. Used by permission of his widow. In the tracing, Central Park line was added, the Harlem line and road lettered, and some details omitted.

V. and VI. Goërck's map of 1796, in Comptroller's office. On the tracings were put additional memoranda of sale and exchange with all dates and prices; also the lines of Third, Lexington and Seventh avenues, and of Fifth Avenue below Forty-Second Street; and the intersection of present streets with the Middle road, now Fifth Avenue. The lettering of other features departs from the original in type but not in effect.

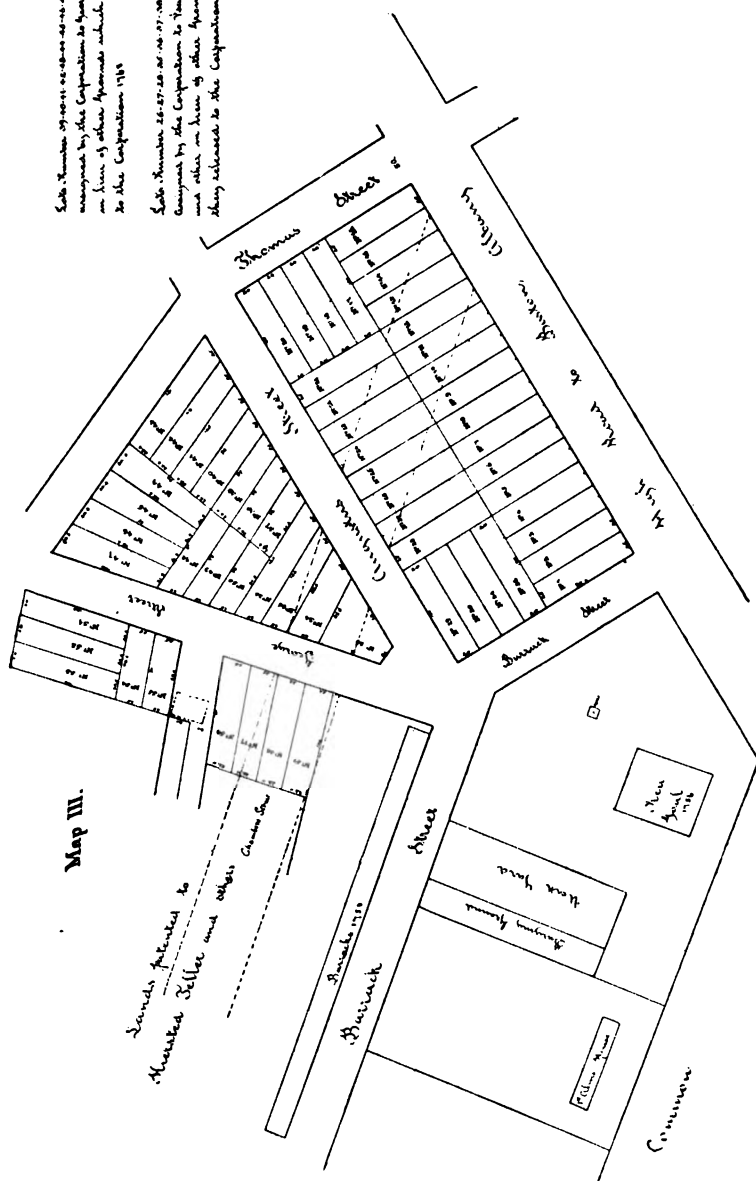
VII. Holmes' Map No. 1, of Common Lands. Used by permission of B. S. Demarest. Much of the finer detail is omitted.

The others are on file in the Comptroller's office. Occasionally a word or mark has been added in the tracing to facilitate reference.

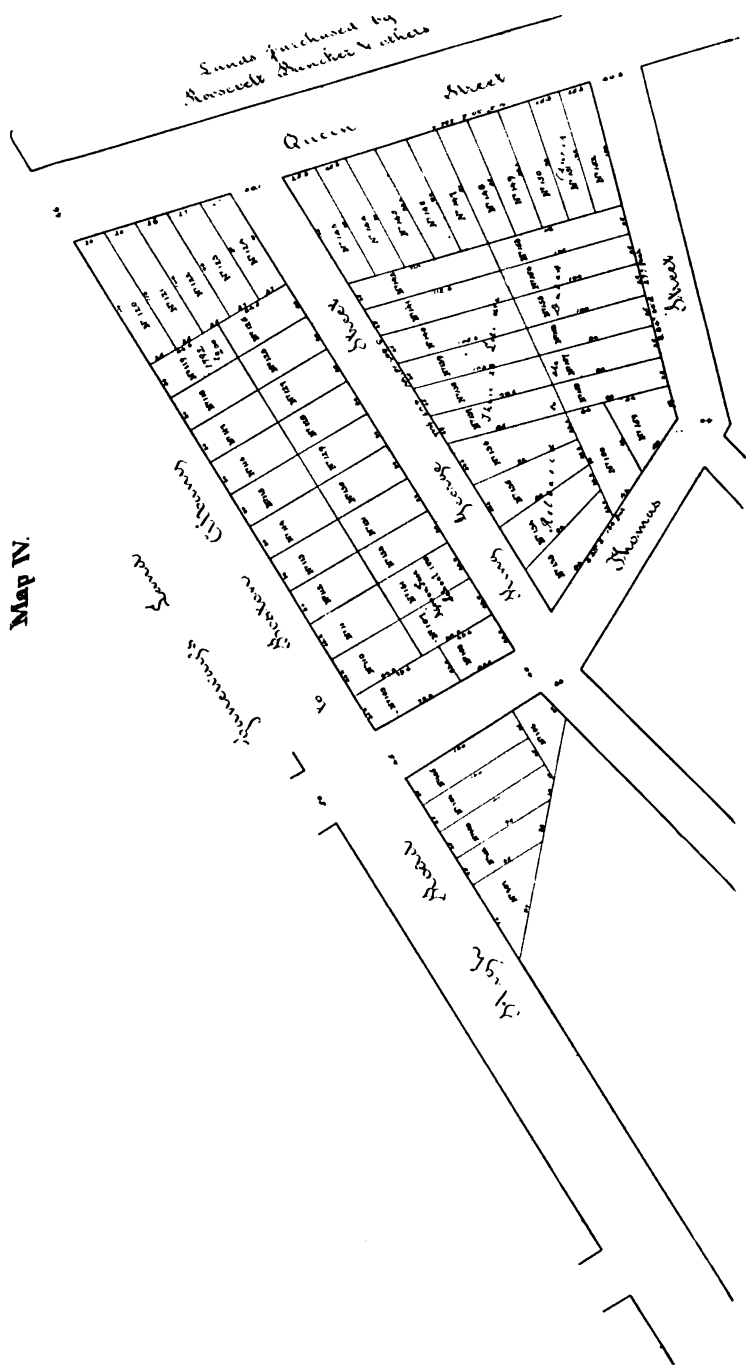


Sub. Number 19-20-21-22-23-24-25-26-27-28-29
 assigned by the Corporation to Henry Johnson
 on June 19 other Agents which he released
 to the Corporation 1888

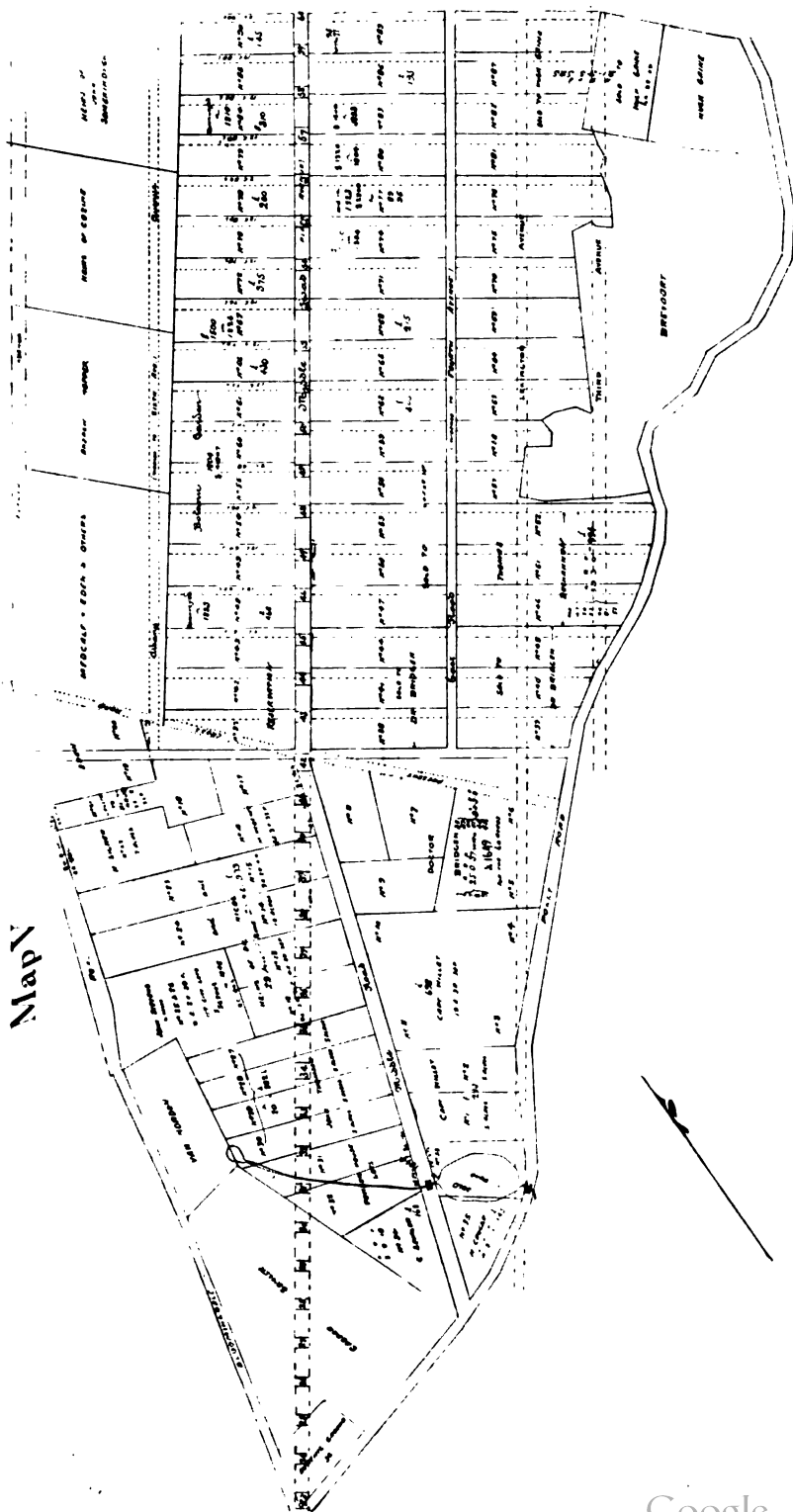
Sub. Number 32-33-34-35-36-37-38-39-40-41
 assigned by the Corporation to Henry Smith &
 and other on June 19 other Agents which
 they released to the Corporation 1888



Map IV.



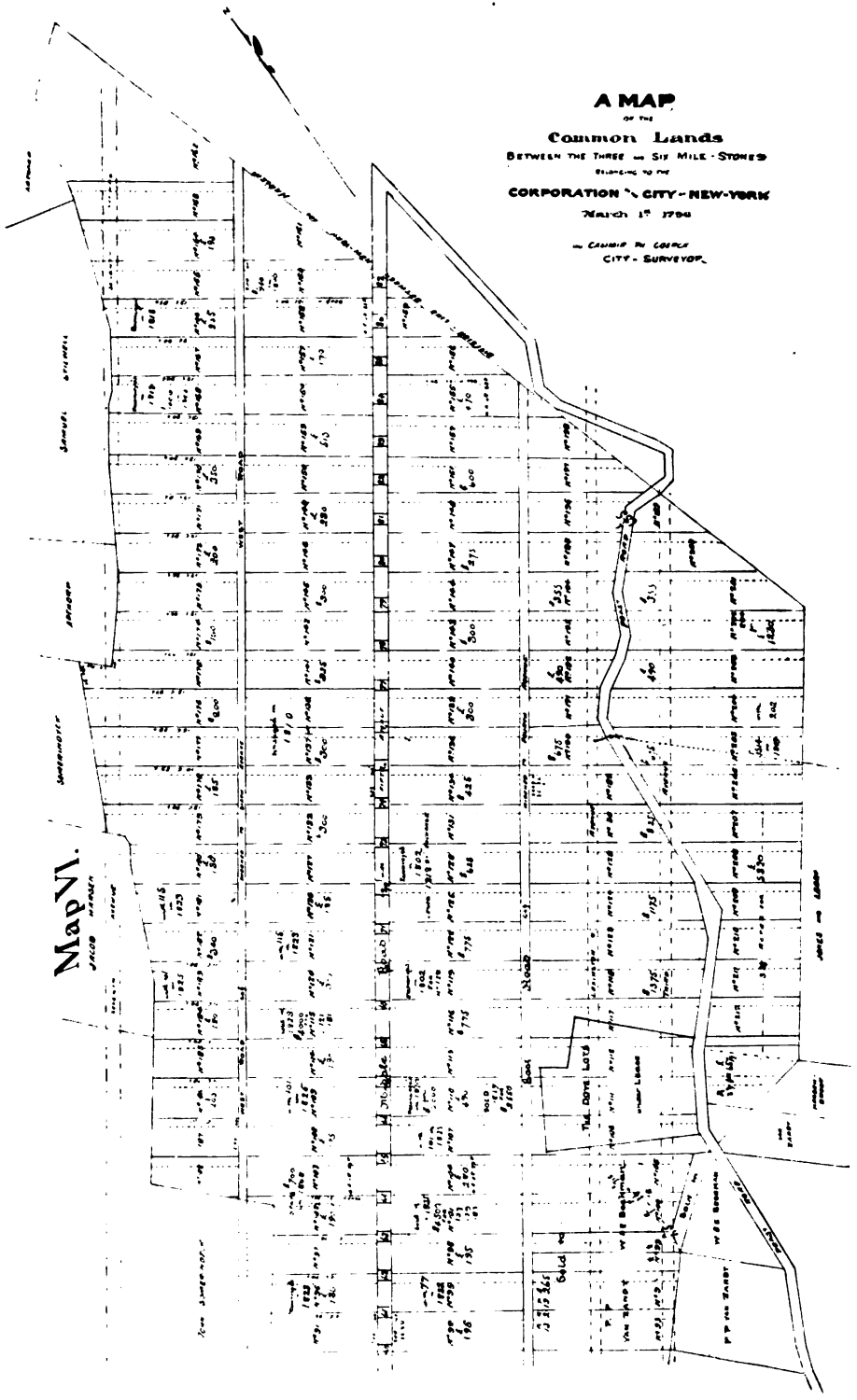
Map

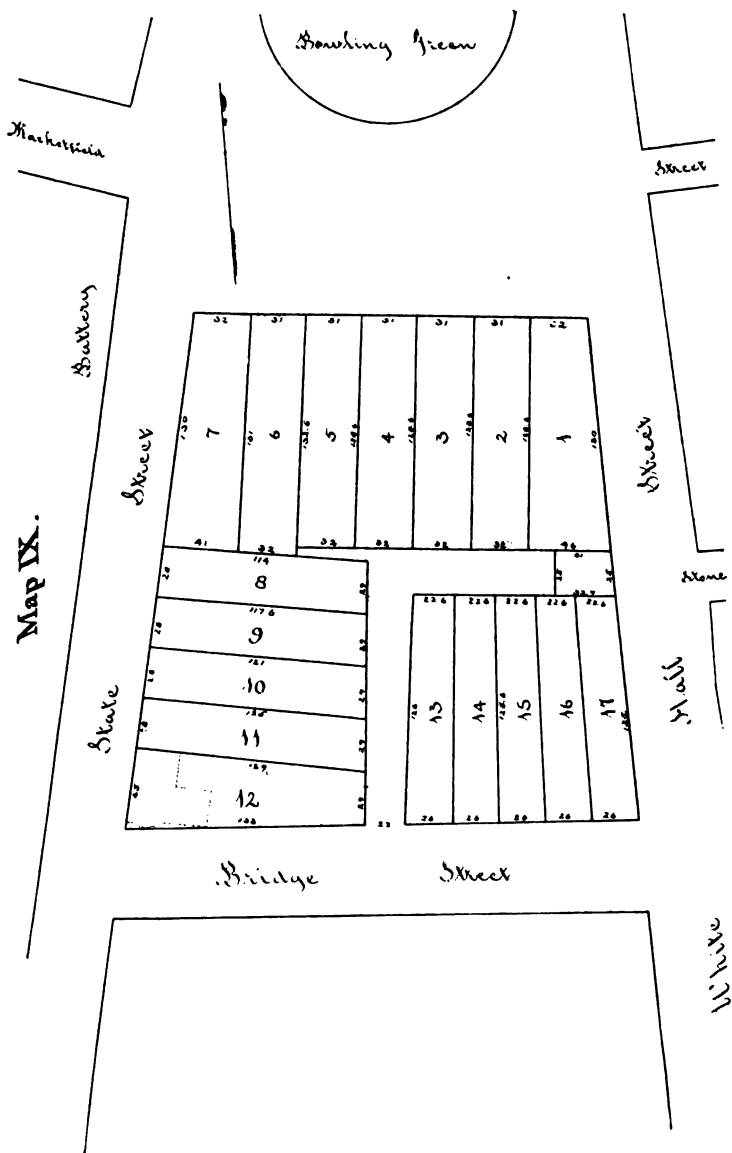


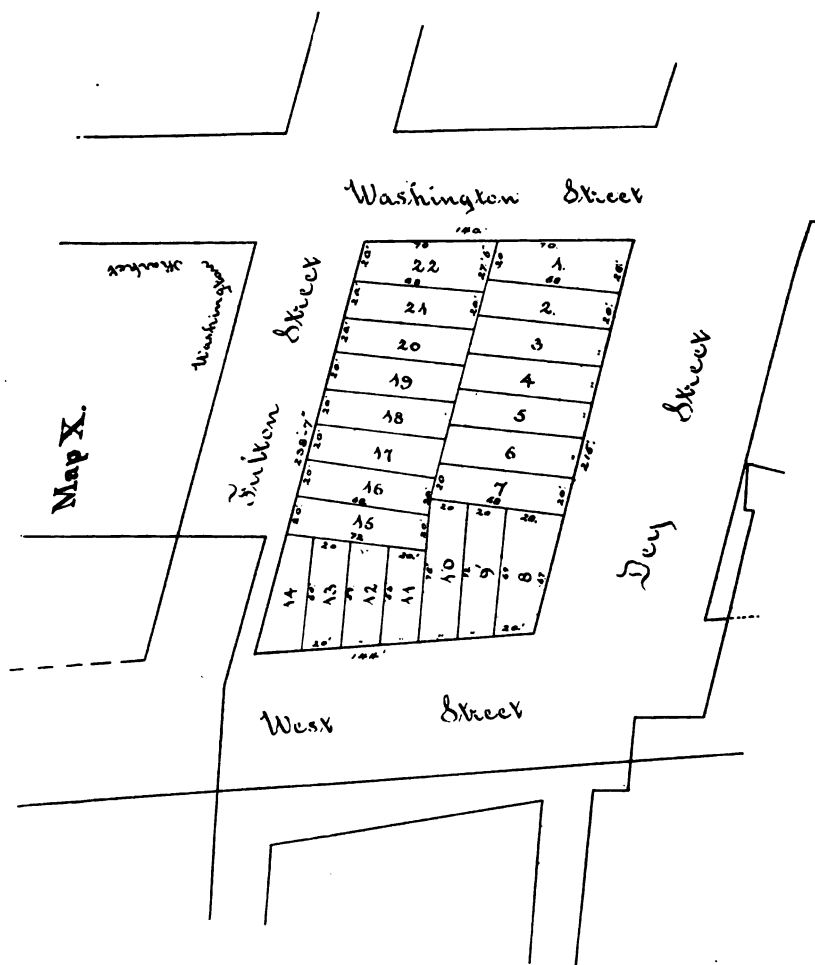
Map VI.

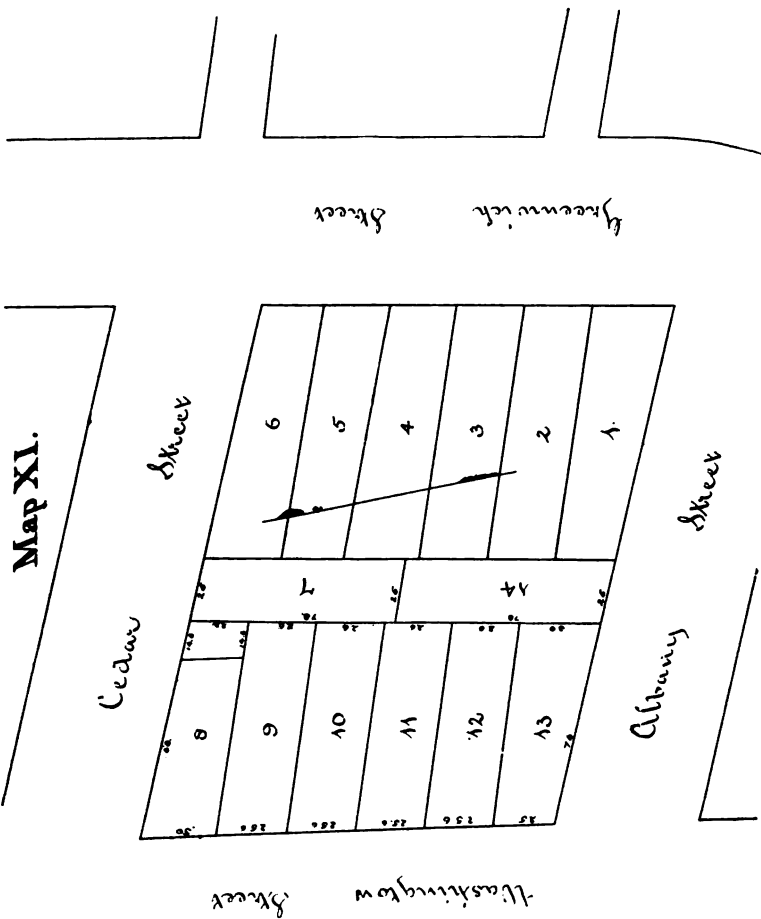
JACOB WARDER

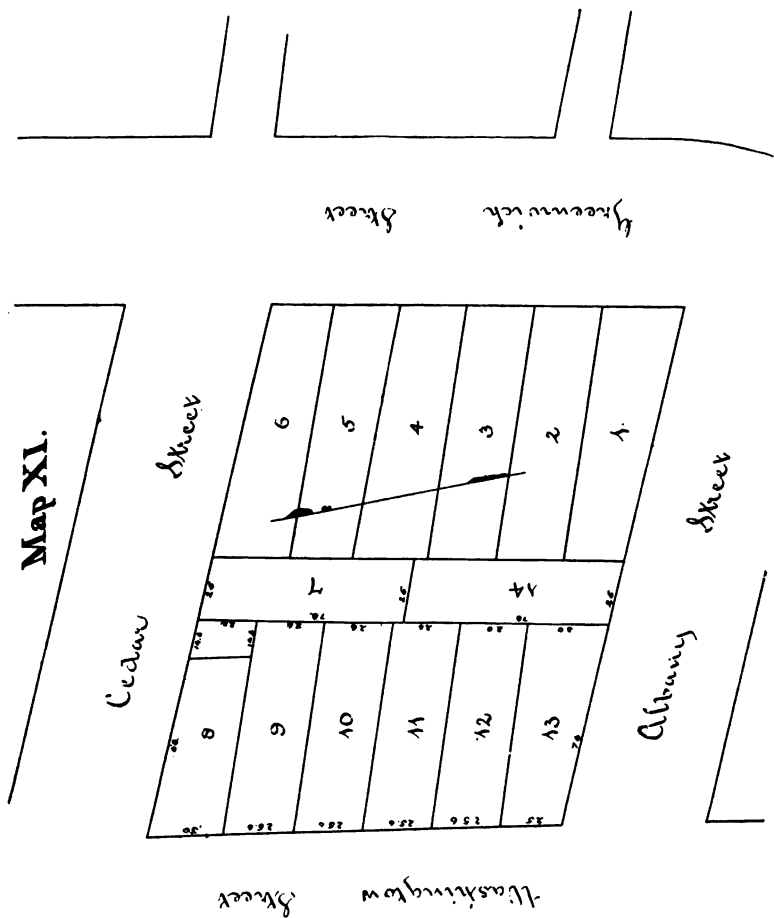
A MAP
OF THE
Common Lands
BETWEEN THE THREE AND SIX MILE STONES
BELONGING TO THE
CORPORATION OF THE CITY - NEW-YORK
March 1st 1796
— CHAS. H. LORRY
CITY - SURVEYOR.

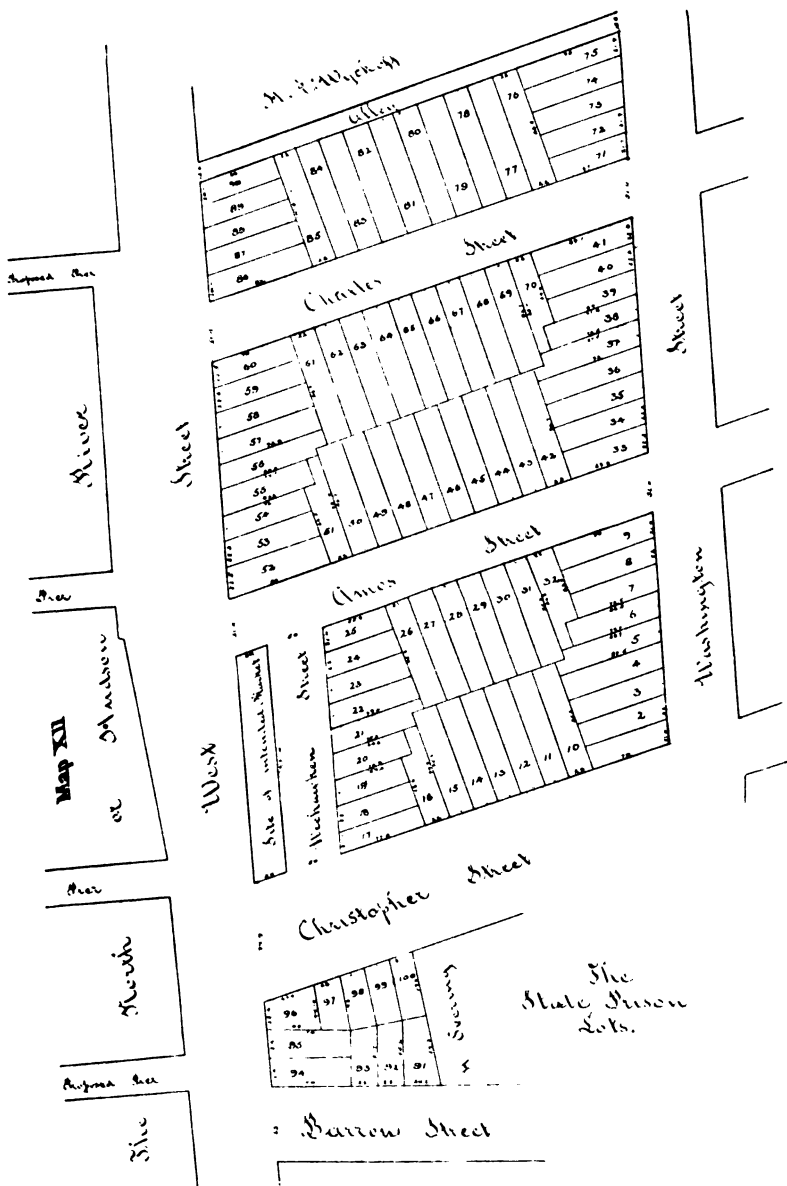












Map XIII.

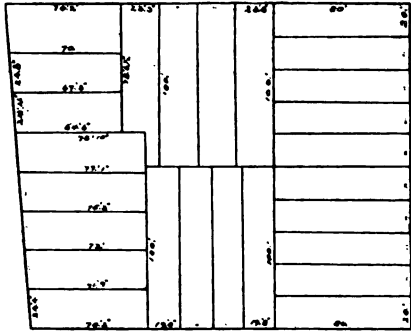
North River

West Street

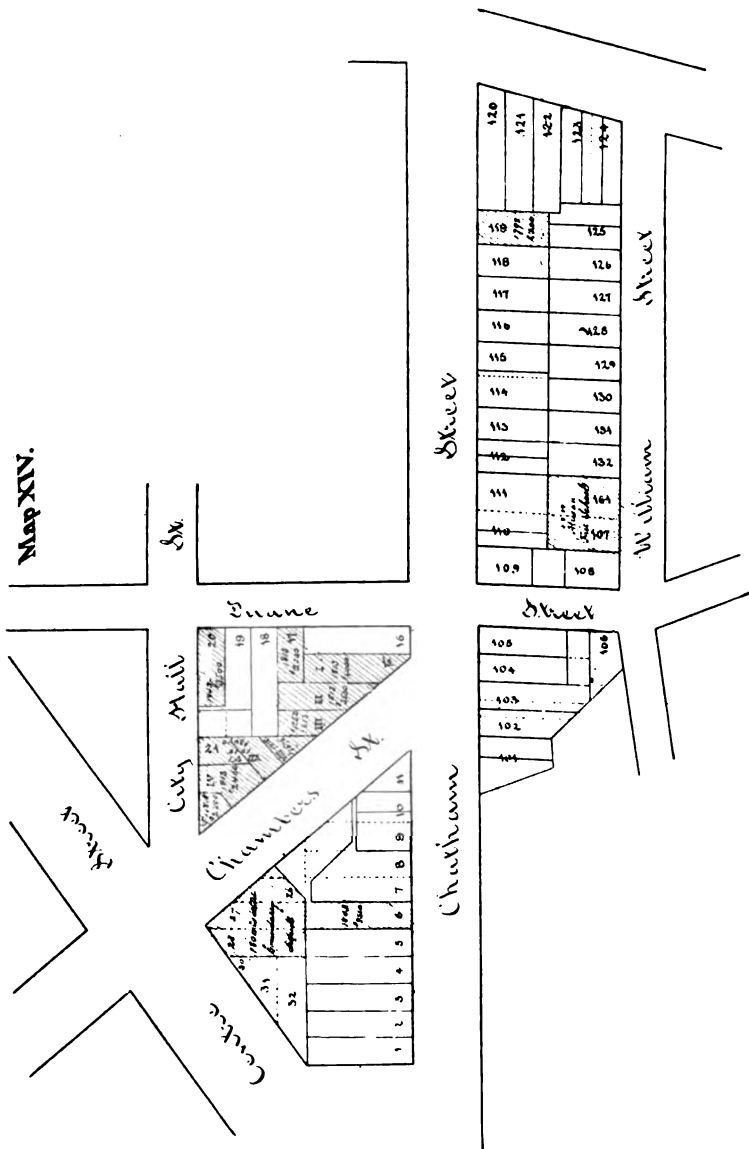
King Street

Washington Street

Charlton Street



Map XIV.



Map XV

28⁺ Street

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24⁺ Street

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Street

Bellevue Lots
 lots upon 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th

Street

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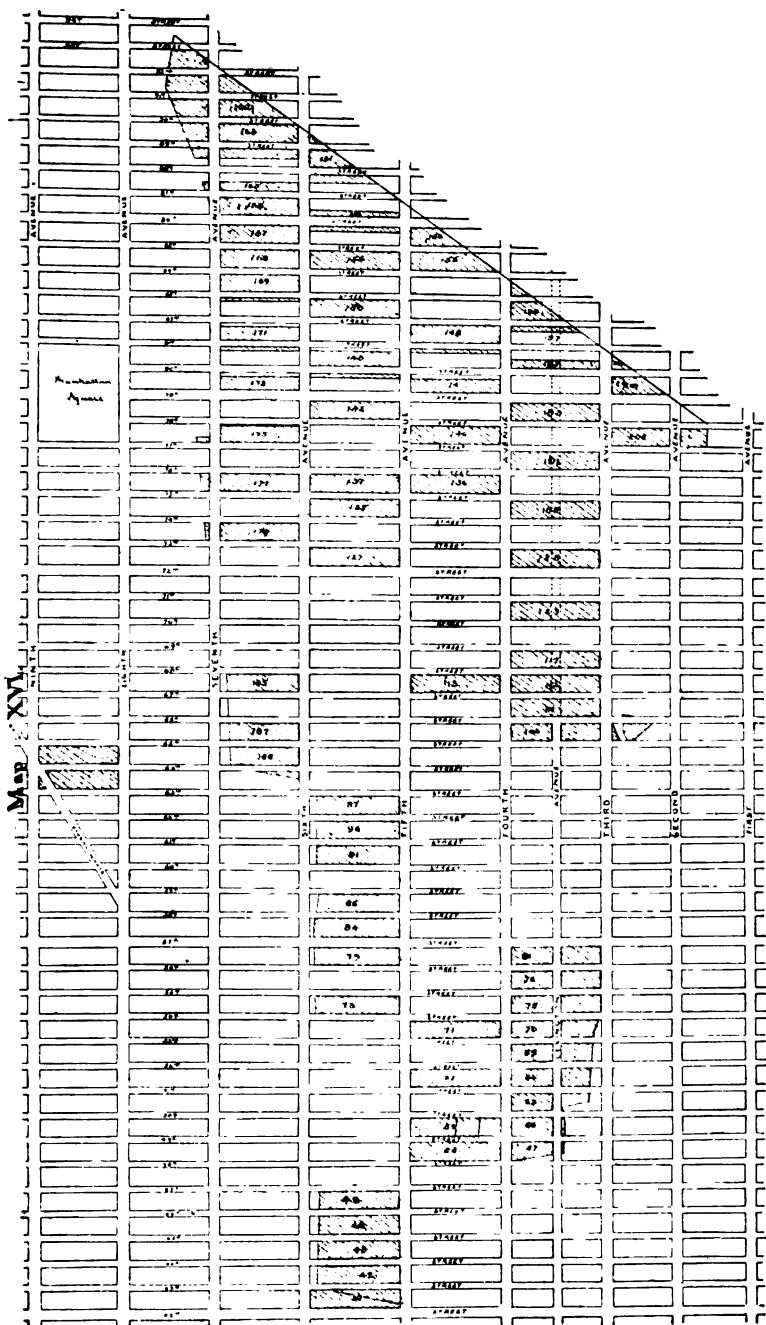
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Street



COLUMBIA COLLEGE

UNIVERSITY FACULTY OF POLITICAL SCIENCE.

Seth Low, LL.D., President. **J. W. Burgess**, LL.D., Prof. of Constitutional History and Law. **R. Mayo-Smith**, Ph.D., Prof. of Political Economy. **Munroe Smith**, J. U. D., Prof. of Comparative Jurisprudence. **F. J. Goodnow**, LL.B., Prof. of Administrative Law. **E. R. A. Seligman**, Ph.D., Prof. of Political Economy and Finance. **H. L. Osgood**, Ph.D., (Adj.) Prof. of History. **W. A. Dunning**, Ph.D., (Adj.) Prof. of History. **J. B. Moore**, A. M., Prof. of International Law. **F. W. Whitridge**, LL.B., Lecturer on the History of New York. **A. C. Bernheim**, Ph.D., Lecturer on City Politics. **F. A. Bancroft**, Ph.D., Lecturer on Political History. **C. B. Spahr**, Ph.D., Lecturer on Taxation. **F. H. Giddings**, A. M., Lecturer on Sociology. **W. C. Ford**, Lecturer on Political Economy. **F. R. Hathaway**, A. M., Assistant in Economics.

COURSES OF LECTURES.

	Hours per week, per half-year.
I. HISTORY.	
(1) Outlines of Mediæval History (undergraduate course)	2
(2) Outlines of Modern History (undergraduate course)	2
(3) European History since 1815 (undergraduate course)	2
(4) Political and Constitutional History of Europe	4
(5) Political and Constitutional History of England to 1688	2
(6) Political and Constitutional History of England since 1688	2
(7) Political and Constitutional History of the United States	4
(8) Constitutional History of the American Colonies	2
(9) Constitutional History of the United States since 1861	2
(10) Political History of New York State	2
(11) History of the Relations between England and Ireland	2
(12) Historical and Political Geography	2
(13) Seminarium in History	2
II. POLITICAL ECONOMY.	
(1) Elements of Political Economy (undergraduate course)	2
(2) Historical and Practical Political Economy	4
(3) Taxation and Finance	4
(4) Communism and Socialism	4
(5) Statistics: Methods and Results	4
(6) History of Economic Theories	3
(7) Financial History of the United States	4
(8) Tariff History of the United States	2
(9) Railroad Problems	2
(10) Sociology	4
(11) Seminarium in Political Economy	2
(12) Seminarium in Science of Finance	2
III. CONSTITUTIONAL AND ADMINISTRATIVE LAW.	
(1) Comparative Constitutional Law of Europe and the United States	3
(2) Comparative Constitutional Law of the Commonwealths of the United States	3
(3) Comparative Administrative Law	4
(4) Comparative Laws of Taxation	3
(5) Law of Municipal Corporations	1
(6) City and State Politics	2
(7) Seminarium in Constitutional Law	2
(8) Seminarium in Administration	2
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Volume I.]

[Number 4.

THE
FINANCIAL HISTORY OF MASSACHUSETTS,

From the Organization of the Massachusetts Bay Company
to the American Revolution.

BY
CHARLES H. J. DOUGLAS, PH.D.,
Seligman Fellow in Political Science, Columbia College.

NEW YORK.

1892.

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IV.
THE
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From the Organization of the Massachusetts Bay Colony
to the American Revolution.

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW.

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THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
OF COLUMBIA COLLEGE, *University of Columbia College*

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PREFACE.

To whatever degree the financial history of Massachusetts during the period of its dependency upon the British crown may be lacking in interest, as compared with the financial history of the commonwealth during the period of its membership in the American Union, I found that a patient and thorough investigation and a discriminating exposition of the financial phenomena of the earlier period were necessary antecedents to an intelligent investigation and interpretation of the far more complex financial phenomena of the later one. Viewed as chapters preliminary to the main discussion of the theme, I hope that the following pages will prove neither uninteresting nor uninformative to those who would become acquainted with the facts in the financial history of one of the most conservative, at the same time that she is one of the most progressive, of American commonwealths. It is my purpose in a future essay to treat of the financial history of New England from the earliest settlement to the present time.

I offer no apology for any departure I may have made from the conventional treatment of financial themes, in the relatively large proportion of space which I have devoted to the exposition of administrative features, and the correspondingly small space to numerical statements, in the treatment of those periods in the history of Massachusetts when not only her financial legislation was taking permanent shape, but her financial records are all but worthless for purposes of accurate and valuable generalization, on account of their fragmentary and unsystematic character.

If the literary style which I have adopted appears at times

to be more involved than is ordinarily desirable, this is so because I could avoid it, even after limiting myself to a single period and to certain features fairly representative of the whole financial system of the commonwealth, only by resorting to one of two expedients,—either to emasculate my thought by omitting the expression of those frequently numerous and complex relationships upon which many of my central propositions depend, or to spin out the essay to an undue length in order to make the style perfectly simple. Considering the character of the readers for whom my work is intended, it did not seem to me that either of these alternatives was demanded.

C. H. J. D.

SCHOOL OF POLITICAL SCIENCE,
COLUMBIA COLLEGE,
February, 1892.

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THE FINANCIAL HISTORY OF MASSACHUSETTS

FROM THE ORGANIZATION OF THE MASSACHUSETTS BAY COMPANY TO THE AMERICAN REVOLUTION.

INTRODUCTION.

§ 1. *Massachusetts in history.*

The figure of Massachusetts is no unfamiliar one upon the stage of history. She has in fact occupied a prominent position there on many important occasions; and if her audience have not always been able to express an unqualified approval of her choice of parts, they have at least not failed to be impressed with the wide range of her histrionic capabilities, or with the intensity with which she impersonates the character of the hour. It is generally conceded that in the varied and trying rôles of persecutor of the heretic and champion of the slave, of punisher of witchcraft at home and defier of oppression abroad, Massachusetts has had few equals and no superiors. But there is another rôle in which she made her début at an early day, for the adequate sustaining of which, though it is far less spectacular than any of those above mentioned, unremitting rehearsal and many public performances during a period of over two hundred and fifty years have scarcely sufficed to prepare this venerable histrionic dame. The performance of Massachusetts as public financier demands our attention.

§ 2. *Periods of Financial History.*

The American revolution marks a natural division of the history of Massachusetts into two periods, each with financial characteristics distinct from those of the other:—the period of her dependency upon the British crown, and the period of her membership in the American union. The first of these periods again divides itself into two others, corresponding to the respective lives of the colonial and provincial charters; while the second, though shaken by no such violent political tempests as served to break up the previous history of the commonwealth into epochs, is marked near its middle by the beginning of that great and varied material development which, during the last half century, has completely changed the character of the science of finance in all civilized countries. We thus have four well-defined periods of financial history. The present monograph is devoted to the first two of these periods, comprising the larger one of the dependency of the commonwealth upon the British crown.

BOOK I.

THE COLONY OF MASSACHUSETTS BAY.

§ 3. *Beginnings of Massachusetts.*

Whether the commowealth of Massachusetts is to be regarded as having had its real origin at the landing of the Pilgrims at Cape Cod in 1620, or at the moment when the Company of the Massachusetts Bay purchased of the Council at Plymouth the title to the vast and vaguely defined territory within the bounds of which the present state of Massachusetts lies, or on the granting of a charter by Charles II. to the Governor and Company of the Massachusetts Bay in 1628, or on the arrival of Winthrop out of England with the charter itself in 1630, is a question in constitutional law rather than in finance.¹ If any of the above views other than the last be taken, we have, prior to the beginning of Winthrop's administration, a period properly embraced within the history of the commonwealth, presenting a body of fiscal material and suggesting lines of financial investigation which offer to the student of finance a high degree of interest. The present dis-

¹On November 3rd, 1620, King James signed a patent by which the adventurers to the northern colony of Virginia between forty and forty-eight degrees north latitude, were incorporated as the Council Established at Plymouth in the County of Devon, for the Planting, Ruling, Ordering and Governing of New England in America. This is the great civil basis of the future patents and plantations of the country. See the text of the patent in Hazard's Collection of State Papers, I., 103. On March 19th, 1627, the Council at Plymouth sold to some knights and gentlemen about Dorchester that part of their patent which lay between the Charles and Merimack rivers. It was to these persons, or to their successors, that King Charles, in 1628, granted a charter incorporating them into a body politic under the style of the Governor and Company of the Massachusetts Bay in New England.

cussion begins with some account of the Massachusetts company.

§ 4. *The Massachusetts Company.*

Concerning the original form of organization of the Massachusetts Bay Company, little information is known to exist. It was probably similar to that of the company who about that time settled at New Plymouth, and who, as we know from the testimony of Capt. John Smith, although they had a capital stock of at least £7000, were not a corporation, but knit together by voluntary combination. The Plymouth Company had a president and a treasurer who were chosen annually by the majority and who ordered the affairs of the courts and meetings and undertook all ordinary business, though in more weighty affairs the assent of the whole company was required. No records of the colony that was sent over by the Massachusetts Company, belonging to Endicott's administration, have been preserved; but Governor Bradford, of New Plymouth, in a letter written June 9th, 1628, mentions a sort of voluntary tax by which various individuals and places in the Bay assessed themselves in certain sums bearing no common proportion to their respective means, and amounting to £12 7s.¹

We have record also of an appeal by the officers of the Massachusetts Company, as early as June 17th, 1629,² while the charter and government were still in England, to the members as individuals to advance to the company such sums as they might be able to spare, toward extinguishing a debt of the company, receiving therefor receipts under the company seal. In this and subsequent similar acts we have the first steps in that development of enforced contribution, or taxation, out of voluntary contribution, which the financial history

¹ Plymouth, £2 10s; Naumkeak, £1 10s; Pascataquack, £2 10s; Mr. Jeffrey and Mr. Burslem, £2; Nastascot, £1 10s; Mr. Thomson, 15s; Mr. Blackston, 12s; Edward Hilton, £1. Total, £12 7s.

² Massachusetts Records, I., 47.

of every organized society presents. It appears from a letter of the company in London to Endicott, May 28th, 1629, that they required of all emigrants hither, who received lands but made no payment to the common stock, a sort of service tax, which, exacting of each colonist and his heirs who held landed estates in this manner a specified number of days' labor each year, bore some resemblance to tenure of socage in England. The income to the government from this source was in reality less a tax than it was the price of a portion of the public domain, alienated on terms which the purchaser could have declined, had he so elected. It is probable that the arrangement was soon abandoned; the above reference to it being the only one thus far discovered.

§ 5. *The Genesis of the Taxing Power.*

The probability arising from the foregoing facts that the Massachusetts Company lacked altogether the power generally vested in stock companies of levying assessments upon their stockholders is rendered more certain by the fact that not only on the occasion above mentioned, when the company was £1500 behind in its accounts, but also in the following November, when it was more than £3000 in debt, no record has been found of any proposition to levy an assessment upon the members, although on both of these occasions various extraordinary measures were proposed for raising funds.¹ If the company itself had no power of assessment, that is of taxation, it is clear that it could grant no such power to a colony organized among its members and sent out under its direction.

¹ An exhaustive account of the fortunes of the original shareholders of the Massachusetts Company is yet to be written, Mr. Samuel F. Haven's short introduction to the reprint of the records of the company for the first thirteen years, contained in Vol. III. of the Transactions of the American Antiquarian Society, being chiefly devoted to an account of the shareholders themselves. Much material for this interesting chapter of the financial history of Massachusetts exists, though in a chirography likely to try severely the patience of the investigator, in Vol. 100 of Felt's collection of Massachusetts Archives.

The vote of the court of assistants of the Massachusetts colony, at their third meeting in America,¹ levying a tax upon all the freemen of the colony, was thus clearly an act of usurpation, which became legitimate only by the acquiescence of every freeman so rated. The power to tax having once become in the government of Massachusetts a *fait accompli*—which the charter of Charles II. ignored and that of William and Mary confirmed—we are henceforth concerned only with the history of taxation as an integral part of the fiscal policy of that government.

§ 6. *The Development of Taxation.*

It is to the triumph of the proselyting over the mercantile spirit among the members of the company in London that we are to attribute the selection, October 20th, 1629, for the important duty of transferring the charter and government of the company itself to New England, of John Winthrop, a man who, however well educated he may have been in the learning of his day, however amiable in domestic and social relations, in a word was too intently devoted to recording prodigies of three-headed calves² to give adequate attention to the management of his own property, to say nothing of developing an original financial policy for the colony over which he presided with suave and conscientious tyranny.³ The tendency of colonists in all times merely to reproduce upon new soil the institutions of the mother country was allowed full play in Massachusetts by the absence on the part of the early governors of any positive interest in, if not by the presence in them of actual con-

¹ On September 28th, 1630.

² See Winthrop's History of New England II., 311.

³ Hutchinson, speaking of Winthrop's being called sharply to account for his financial transactions while governor, says that he "might have torn his book of accounts, as Scipio Africanus did, and given the ungrateful people this answer: A colony now in a flourishing state has been led out and sewed under my direction. My own substance is consumed. Spend no more time in harangues, but give thanks to God."—Hutchinson, History of Massachusetts, I., 140.

tempt for, all financial concerns. Accordingly we find introduced, as a matter of course, as one exigency after another called for successive increases in the public revenue, the general property tax, imposts, excises, the capitation tax, the income tax and taxes on certain specified classes of property—all of them forms of taxation with which the colonists had already become familiar in England. Indeed, so conservative have the people been that these remained the only forms resorted to, not only during the colonial and provincial periods, but long after Massachusetts became a state independent of the British crown.

§7. *The Property Tax.*

Unlike the imposts and excises that constituted almost the sole sources of revenue for their commercial neighbors in New Netherland,¹ the backbone of the loose-jointed fiscal organization which, prior to the middle of the seventeenth century, had become sufficiently developed among the farmers of Massachusetts Bay to admit of its identification, was a general property tax, levied at first as the occasion of the hour demanded, and afterward with greater regularity,² upon the estates of the freemen of the colony. The machinery for assessing and collecting this tax was as simple as the theory underlying the assessment was just; and neither theory nor machinery underwent much, if any, alteration during the colonial period. Indeed, as we shall see in subsequent sections, it was essentially the colonial system of taxation that extended quite through the provincial period, and even well into the present century.

§8. *Apportionment, Repartition and Assessment.*

The first step in the history of one of these early colonial property taxes was the apportionment among the various

¹ Schwab, *History of the New York Property Tax*, 19.

² The act of November 24th, 1646, first provided for yearly taxes.

towns of the colony of the sum granted by the general court to be raised. At first the apportionment was made by the general court itself in proportions agreed upon among the deputies, who, as long as the number of towns in the colony remained small, had a better knowledge than any one else of the value of the property in each. But the growth of the colony in wealth and population soon rendering this plan unsatisfactory, an act of May 16th, 1636, named thirteen free-men of the colony as a committee "with power to require the last rates of each town in the plantation, and find out thereby and by all other means they can, according to the best of their discretion, the true value of every town and so to make an equal rate"—the committee to meet in Boston on a day appointed in the act, and there to determine the apportionment. As evidenced by numerous references, this plan was continued as late at least as 1640, on May 13th of which year a rate of £1200 was granted and the usual apportionment committee appointed.

There are reasons for believing that for the first sixteen years of the existence of the colony the repartition among the taxpayers of the quotas determined for the towns by the general court and the apportionment committees was made by the selectmen of the respective towns. The principle upon which assessments were to be made was laid down by the general court as early as May 14th, 1634: "In all rates and public charges the towns [through their assessors] shall have respect to levy every man according to his estate, and with consideration all other his abilities whatsoever, and not according to the number of his persons."¹ The language of the acts of this and of later periods is often ambiguous, and there is no reason for supposing that the ideas of their framers, upon fiscal matters, were either very definite or very systematic. An order of the general court under date of May 3d, 1636, "explains" an order of May, 1634, according to which all men were "to be

¹ Massachusetts Records, I., 168.

rated in all rates according to their whole ability wheresoever it lyes," by enacting that thenceforth "all men that live in this jurisdiction be rated only in the place where they live to all public rates, and those that live not in this jurisdiction are to have their goods, stocks and lands rated where they are in being."¹ June 6th, 1639, an act was passed declaring that estates in England should be taxed for what they were worth;² but this was repealed two years later.³

§ 9 *Taxpayers ; Exemptions.*

The restriction of taxation to freemen of the colony resulted, as long as all the adult male inhabitants of the colony were freemen, in manhood taxation. When the number of men who were debarred from becoming freemen because they were not church members, and who thus escaped taxation altogether, had become so large that the manhood basis began to be seriously impaired, the colonial government took a further step in the extension of their prerogative and in the development of taxation from voluntary contribution, by enacting that all male inhabitants above the age of sixteen years, whether church members or not, "servant or other," must contribute to the common charges; and that if they did not do so voluntarily, they must be assessed and compelled to. In 1665⁴ the court declared that so many strangers came into the colony with cargoes, which they disposed of in time to depart before the next tax, that thereafter the cargoes should be taxed when they came in; that if the owners refused to disclose the value of them, the goods should be "doomed," and the collectors should be given power to distrain them.

From the beginning, certain exemptions to the general rule of taxation were made. Sometimes the exemption would be

¹ Massachusetts Records, I., 168.

² *Ibid.* 262.

³ *Ibid.* 330.

⁴ May 3rd.

made on account of poverty resulting from old age, sickness, lameness, blindness, or such other infirmity as appeared to the selectmen to disable the man from contributing. Sometimes it was regarded as a partial or complete compensation for public services, as in the case of troopers,¹ of magistrates to the extent of £500² and of professors in Harvard College to the extent of £100 personal property³. At other times exemptions were accorded for the encouragement of enterprises likely to prove of public benefit, such as the fisheries,⁴ from time to time, and the iron works set up in Braintree;⁵ or as pure gratuities, as when the exemption on account of age, at first confined to individual cases, was extended to all inhabitants over sixty years old, on the supposition of the general inability of such persons to contribute. It is impossible from any data known to exist to ascertain the exact proportion of all these exemptions to the whole population of the colony; but probably it was small. A more serious factor in disturbing the universality of taxation was the custom which prevailed from a very early time, of partially or wholly exempting, by special enactments, for several years at a time, towns newly settled or lately ravaged by the Indians.⁶ A remonstrance of the town of Boston to the general court in September, 1653,

¹ The practice of exempting troopers existed before 1648. July 9th, 1675, troopers not exempt from rates for Indian war. October 13th, troopers' exemption limited to one rate annually. Massachusetts Records, V., 49, 94-5.

² May 14th, 1645, Massachusetts Records, II., 101; November 4th, 1646.

³ Massachusetts Records, IV., 537. They were more fully exempted by the act of June 19th, 20th, 1754-'5, c. 11.

⁴ Massachusetts Records, I., 257.

⁵ March 7th, 1643 '4, Massachusetts Records, II., 62.

⁶ May 14th, 1656, Groton freed for three years from the date of the grant. Massachusetts Records, IV., Pt. I., 262.—June, 1661, Springfield and Northampton rate free one year, to build prison to cost not less than £60. Massachusetts Records, IV., Pt. II., 21.—June 3d, 1674, Southfield exempt for four years. Massachusetts Records, V., 13.—October 12th, 1676, abatements to Medfield, Weymouth, Hingham, Sudbury, Concord, Chelmsford, Andover, Springfield, Northampton and Hadley; but one to Hampshire refused. Massachusetts Records, V., 122 *et seq.*

against the exemption of magistrates, passed unheeded. On November 2d, 1680, the deputies passed an order that thereafter "no person of what quality soever" should be exempted from the country rates for either his person or his estate, except such persons as were disabled by sickness, lameness or other bodily infirmity, who should be exempted for their persons only, and elders regularly ordained over churches, who should be exempted for estates of their own, under their own management.¹ This vote, evidently aimed at the magistrates, was lost by the non-concurrence of that body. On the whole, there seems to have been no general or long-continued dissatisfaction on account of exemptions during the period under review.

§ 10. *Collection: Officers; Difficulties.*

The machinery for collecting taxes in Massachusetts was from the earliest times exceedingly simple. It may have been the fact that the constable was already "armed with very large powers, of arresting and impressing, of breaking open houses and the like,"² to the end that he might the more successfully perform his general duty of keeping the king's peace in his district, which first suggested him to our ancestors in England as the most natural officer to whom to commit the collection of taxes—a duty in the performance of which it would be necessary, in certain cases, to have recourse to the legal process of distress, or even to imprisonment. Although the first tax act of the court of assistants of the Massachusetts Bay Company in America³ fails to name the officer who should collect the tax, it is evident from the facts that it was to "be collected and levied by distress," and that for many years afterward no officer except the constable is mentioned in connection with collections, that the duties of that ancient

¹ Felt's Massachusetts Archives, Vol. 100, p. 262.

² Blackstone, Commentaries, I., 356.

³ September 28th, 1630.

officer transplanted to New England, as far as they concerned financial matters, had not been abridged by the colonists, and that from the very beginning he held in the financial system of Massachusetts the position which he continues to hold to-day. The difficulty of collecting the taxes at this early period is attested not only by the empowering of the officer to distrain for them,¹ but by the beginning, as early as 1636, of the practice of dividing a tax granted into two or more payments, several months apart,² and by the specific mention of arrears in acts of 1643 and various subsequent years and in various documents throughout the colonial period.³ It was largely this difficulty that led to the introduction of excises and imposts in 1644,⁴ and to various adjustments of the tariff at subsequent times, with a view to lessening the property tax.⁵

§ 11. *The United Colonies.*

We are not surprised to find the principle of taxation according to ability to pay, upon which the Massachusetts system was thus early grounded and which was recognized in all the New England colonies, embodied in the articles of confedera-

¹ Massachusetts Records, I., 239.

² Sometimes, as in the case above cited, September 7th, 1636, the second payment would be postponed to a time to be determined by the court in the future; in which case it usually happened that the time was never fixed and the payment never made.

³ The report of the committee to audit the treasurer's accounts, 1669-'70, mentions great delinquency in the payment of taxes outside of Boston and Charlestown. Felt's Massachusetts Archives, Vol. 100, pp. 147-154.

⁴ November 13th.

⁵ "The Magts being sensible that the Inhabitants of this Jurisdiction do in many respects Labour under those difficultes which make the taxes of the country (though small comparatively) to be a great burden, do judge meet that a committee be named & appoynted by this Court to consider of some expedient for help therein, by addition to customes, or other ways in such wise as may not discourage the trade & marchandize of the Country, and for yt end doe name," etc. This vote was lost by the non-concurrence of the deputies. See Felt's Massachusetts Archives, Vol. 100, p. 176.

tion adopted in August, 1643, by the colonies of Massachusetts, Plymouth, Connecticut and New Haven. The article relating to the raising of troops and funds for the commissioners of the United Colonies reads as follows :

"It is by these confederats agreed that the charge of all just warrs, whether offensive or defensive, upon what part or member of this confederacon soeuer they fall, shall both in men and provisions and all other disbursements, be borne by all the parts of this confederacon in different proporcons according to their different abilitie. And that according to the different members, which from tyme to tyme shalbe formed in eich jurisdiccon, upon a true and just account, the service of men and all charges of warr be borne by the polls: eich jurisdiccon or plantacon being left to their own just course and custome of rating themselues and people according to their differant estates, with due respect to their quallities and exemptions among themselves, though the confederacon take no notice of any such priviledg: and that according to their different charge of eich jurisdiccon and plantacon, the whole advantage of the warr (if it please God to bless their endeavours) whether it be in lands, goods or persons, shalbe proportionably divided among the said confederats."¹

§ 12. *Efforts toward Improvement.*

From all the foregoing it is sufficiently evident that the system of taxation in operation in Massachusetts Bay, never yet very effective, was every day becoming less adequate to the needs of a now rapidly growing colony. There was a feeling that it was the constables who were at fault; and on November 13th, 1645, the general court, in a spasm of administrative reform ordered them—"Every constable that now is or hereafter hath binn"—to clear up their accounts with the treasurer by the first of May yearly, on penalty of being fined £5 apiece; and they were given the power of impressing boats and carts to enable them to transport the commodities in which the taxes might be paid.² Under date of October 7th, 1646, the

¹ Hazard, II., 2, 3; quoted by Felt, Statistics, 230.

² Massachusetts Records, IV., Pt. I., 247.

general court, considering that it had incurred the necessary expense of sending an agent to England, and that the treasurer reported no money in the treasury, recorded its conviction that the constables, marshals, auditor or treasurer were to blame, and chose a committee of three to investigate the matter and prosecute the delinquents. We have seen no account of the report of this committee; but within less than a month, on November, 4th 1646, an act was passed which is here subjoined in full, because, simple as it is, it yet placed the whole tax system on a more scientific footing, and so marks the beginning of a new period in the financial history of the colony.

“For y^e avoiding of all complaints by reason of unequal rates either of towns or psons, occasioned through y^e want of one gen^rall way and rule of rateing through out y^e country, and y^t levies hereafter may be more easy, equall, and certeine, it is hereby ordered, y^t in all publike rates (till this Corte take further order therein) all sortes of cattle shalbe valued as hereafter exprest * * * * houses, lands of all sorts, marchantable goods, mills, shippes, lesser vessels and boates, cranes, wharfes, togethr wth all oth^r visible estate, reall or psonal, y^t any pson is possessed of, or hath in his custody, eith^r at sea or on shore, to be valued in y^e severall townes according to their worth, in y^e said places where they are, pportionable to y^e aforesaid prizes of cattle; and it is y^e meaning of this order y^t because arable ground, medowe, and cattle are to be rated, y^t therefore they, together wth all corne growing in y^e country, in y^e husbandmans hand, shall not be lyable to any rate; and for avoyding all partiality in rating lands and oth^r estate not p^ticularly prized in this ord^r, it is ordered y^t y^r shalbe by ev^{ry} towne one of their inhabitants chosen by y^e freemen of y^e said towne, who, wth y^e select townes men shall take the iust numb^r of their males, and also shall make a true valuation of all things rateable by this order, w^{ch} inhabitants aforesaid, for their severall townes respectively, shall meet in their shire townes upon y^e 2th 4th day of y^e first month next ensuing, to examine y^e truth and equity of each towns pceeding herein, who shall correct and determine as to the maior pt of them seems right and iust to be done, according to y^e true intent of this order; w^{ch} assesmt^s of y^e severall townes

they shall und^r their hands forthwith deliv^r to y^e Treasurer, who shall also forthwth send forth his warrants for leviing y^e same wth in one month, whereby he may have to answere y^e engagements of y^e country; and assesm^{ts} for estates shall hereafter be made y^e first 4th day of y^e 6th m^o, from time to time; but all levies for y^e psons shalbe made and paid into y^e treasury in y^e first m^o, from^m year to yeare, as is pvided in y^e order aforesaid."¹

§ 13. *Further Reforms.*

So well does the reform thus inaugurated appear to have worked that an act of October 27th, 1647, instructed the colonial treasurer to send out notice every fifth month without further instruction, to the constable and selectmen of every town, requiring the constable to call together the inhabitants, who should elect one of their freemen to be commissioner, who together with the selectmen should make out a tax-list, submit it to the examination of the freemen and, after correction, transmit it to the treasurer as provided by the act of the previous year. The act further provided that if any commissioner or selectman were found guilty of neglect or falsifying, he should be fined forty shillings for each offence. Another section became the corollary of the act of May 16th, 1636, declaring that, inasmuch as so many owners of real estate living in the towns departed from them every year just in time to escape being taxed, thereafter all real property should be taxed where it lay. Partly as a wise precaution against collusion between the assessors and the treasurer, and partly to give a newly-created officer, the auditor-general, something to do, an act of May 10th, 1648, provided that the commissioners of the towns should transmit, within one month after their meetings in these towns, true transcripts of their tax-lists to the auditor-general, who should deliver them to the treasurer, to be collected as before. But now that an effort to render the tax system more effective was really beginning to be

¹ Massachusetts Records, II., 174-'5.

made, it was not long before enough weak points in that system were discovered. Already the fundamental defect of a general property tax—a defect that becomes more fatal as a community makes industrial progress—was beginning to be painfully evident; and we have the commencement of that series of skirmishes so familiar to the student of taxation, between the tax-layers on the one hand and the tax-payers on the other, in which the former find themselves impelled to more and more drastic measures for discovering and dragging out before the assessors the ever-multiplying forms of intangible personal property, and the latter are rather diverted than embarrassed by the necessity of devising means for evading every new turn of their pursuers. The first move of the game in Massachusetts was made by the legislature, May 7th, 1651:

“To the end that all public charges may be equally borne, and that some may not to be eased and other burdened, and being found by experience that visible estates in lands, corn, cattle, are, according to rule, wholly and fairly taxed, but the estates of merchants, in the hands of neighbors and strangers, or their factors, are not so obvious to view, but, upon search, title of these estates do appear, being of great value, so that the law doth not reach them by that rule of taxing visible estates, it is therefore ordered and enacted by this court and the authority thereof that all merchants, shopkeepers and factors shall be assessed by the rule of common estimation, according to the will and doom of the assessors in such cases appointed, having regard to their stock and estate, be it presented to view or not, in whose hands soever it be, that such great estates as come yearly into the country may bear their proportion in public charges; yet if any find themselves overvalued, if they can make it appear to the assessors, they are to be eased by them; if not, by the next court.”

§ 14. *Attempts at Equalization.*

An act of May 6th, 1657, declares that “Whereas it is evident that there is much injustice and inequality in the assessment of public rates in each town within this jurisdiction,

whereby some are eased, others burdened, and the commonwealth prejudiced, for the prevention thereof it is ordered that houses and lands of all sorts shall be rated at an equal and indifferent value according to their worth in the towns where they lie." This seems to show that the comparative unavailability of real estate as a basis for general, as opposed to local, taxation was already beginning to be felt with the expansion of the province. On April 29th, 1668, a commission consisting of six members was appointed to visit each county, meeting the commissioners from all the towns therein, at a particular place in the county, to examine and equalize the lists. On May 15th, the commission reported that they had visited all the counties, and, though much embarrassed by the imperfection of the lists, had performed their duties by raising or lowering the taxes in various towns, according to their judgment, in the spirit and letter of the law.¹ On October 21st, 1669, "the commissioners of the several shire towns," having met, according to the order of the court and having perfected the assessments of the several towns, and transcribed them to the colony treasurer, now petition the court for their pay.² Finally, on October 11th, 1682, the court declared that so many farms are laid out outside of the towns and so pay no rates though the land is rising in value, the owners of such farms must thereafter pay two shillings per one hundred acres, the selectmen of each town to take account of all such farms lying near their towns.³

§ 15. *Rate and "Rates."*

The materials for ascertaining the rate of taxation under the first charter, while they are not complete for the first few years, become much fuller after 1650. In the absence of positive contemporary evidence it may be presumed that the propor-

¹ Original report in Felt's Massachusetts Archives, Vol. 100, p. 127.

² Massachusetts Records, IV., Pt. 2., 444.

³ Massachusetts Records, V., 376.

tion of one penny to every twenty shillings of the value of estates, which had become the usual rate before 1646, and which by the act of November 4th in that year was established by the general court as the legal rate upon "lands and goods," was fixed upon as the proportion which, in the light of experience, ought to yield a sum nearly or quite sufficient to meet the public expenses, when reckoned upon the property of the colony and taken together with the proceeds of the poll tax. Certainly the inhabitants of the colony were good enough mathematicians to know that in a computation in which the base and the rate per cent. are both fixed quantities the product is also a fixed quantity; but if they hoped, by fixing upon an unvarying rate to be applied annually to the property in the colony, to limit the expenditure by the government to the sum thus obtained, it was not long before the futility of their attempt was manifest. The ingenuity of the colonial legislators was, however, sufficient for the emergency that arose when it became evident that the whole amount of property in the colony, as returned by the commissioners, was not increasing at as rapid a rate as the public expenses were. From the passage of the act of November 13th, 1655, which ordered one and one-quarter rates to be laid, the one penny per every twenty shillings ceased to be *the* rate and became a "rate." It was the old scheme of reduplication that had long before been practiced in England in multiplying the tenths and fifteenths. In Massachusetts not only was the rate of the "rate" thus increased, but the early practice of making more than one levy per year was revived when occasion demanded. On the other hand, in 1670 only "half a rate" was levied; and in 1672 it was ordered¹ that no rate at all be levied, as the income from wines, peltry, etc., was sufficient to meet the public expenses. From this time on till the loss of the charter the rates were added to or multiplied year by year, the number rising in some years as high as sixteen, noticeably in 1676

¹ Act of October 8th, 1672.

to meet the expenses of King Philip's war. The average for the whole time was not far from four. Yet the pleasing theory was still maintained that the regular rate was but one penny per pound, and the assessors found themselves relieved by the legislature of one of their most disagreeable duties.

§ 16. *The Poll Tax.*

By far the most interesting feature of Massachusetts finances under the first charter is the poll tax. What has already been said of the simplicity of the machinery for assessing and collecting the property tax is equally true of the poll tax; in fact, the machinery for both the taxes was identical, both being apportioned and assessed by the same body, though at first at different times of the year, and collected together in a single sum. The poll tax entered, together with the property and faculties taxes, as a component element into the sums which the deputies apportioned among the towns. The taxpayers and exemptions were the same as in the case of the property tax. The rate, too, in the case of polls, was regarded as being the same as that in the case of property, viz., one penny per pound. But instead of ascertaining by inquiry the money value of each unit to be assessed, as was done in the case of the property tax, an arbitrary sum was taken as the common value of each adult male poll in the colony—a theory sufficiently democratic, one would suppose, to satisfy the demands of the most uncompromising social leveler. By the important act of November 4th, 1646, already referred to, and the first rule upon this point which we have seen, the amount of the poll tax was placed at twenty pence for each taxpayer—the base upon which it was reckoned being, of course, twenty pounds. There is reason for believing that the same figure had then been in use from the beginning of the poll tax in Massachusetts. The next year, October 27th, 1647, the rate of the poll tax was raised to two shillings six pence; but August 30th, 1653, a return was made to the old rate, and

November 7th, 1690, the tax was reduced to twelve pence for each "rate."

§ 17. *The Reduplication of Poll Taxes.*

It is not, however, in these particulars that the chief interest of the Massachusetts colonial poll tax lies to students of finance. That interest attaches to the amounts, astonishing enough, whether considered absolutely or in comparison with the corresponding amounts yielded by the property tax, which were exacted from each male inhabitant of the colony under the system of reduplication of rates already described. It was certainly an unfortunate day for all but the wealthiest colonists of Massachusetts when the expedient of reduplicating rates was applied to them; for it must be understood—and here lies the point of the whole matter—that the doubling, or trebling, or quadrupling of a "rate" meant the doubling, or trebling, or quadrupling, not only of the property tax, but of the poll tax as well; and, the poll tax being the same for rich and poor alike, the inequality of any reduplication increased in geometrical ratio, in favor of or against the taxpayer, according as he possessed more or less than the average amount of property for each taxpayer. An attempt of the writer to collect sufficient data from which to construct a continuous diagram, showing the actual amount of the poll tax in Massachusetts for each year, from the beginning to 1680, has thus far proved unsuccessful. Such a table would convey better than can any verbal description an idea of the state of things that drew from the long-suffering townsmen of Boston in 1653 a petition, one of the most valuable of our early financial documents, in which they truly say: "In respect of polle money we apprehend its parallel is not in any country where the sword is not drawn in offensive or defensive war."¹ But although the petitioners make in their memorial four propositions looking toward the more equable distribution of taxes, they offer no

¹ Original petition in Massachusetts Archives, Vol. 100, p. 44.

suggestion touching a reform of the poll tax. Even the expedient, only partially effective in practice and no more just in principle, of reducing the rate of the poll tax for each "rate," as was done in 1689, appears not to have occurred to any one of these petitioners; and the practice of reduplicating poll taxes, the most grossly inequitable of any feature of colonial taxation in Massachusetts, was continued till with the better organization of the finances under the second charter it was finally discarded.

§ 18. *The Faculties Tax.*

Notwithstanding the general impression that property and poll taxes were the only forms of direct taxation practiced in colonial Massachusetts, what is to all intents and purposes an income tax, partial, indeed, in its operation—as what income taxes have not been?—but yet a veritable income tax, is found as early as 1646. The important tax law of November 4th of that year, so often referred to in the preceding pages, beside providing for a property and a poll tax, declares that "every laborer, artificer, etc., that takes over 18d. per day in summer time, or works by greate that averages over 18d. per day, shall pay 3s. 4d. over and above the 20d. [poll tax] beforesaid;" and that others, not particularly mentioned, such as smiths and the like, shall be "rated proportionable to the produce of the estates of other men," provided the usual exemptions for inability to contribute are made. Here we have the principle of the income tax applied to two classes of incomes from "faculties," as the expression then was. In an act of the next year, October 27th, 1647, the 3s-4d. class was omitted, and all those enumerated were taxed on the capitalized value of their wages. This income tax, as long as it lasted—the phrase referring to "faculties" is retained in the Massachusetts tax acts to this day—was assessed, levied and collected by the same officials and at the same time as the property and the poll taxes were. On account of this commingling there is no way of ascertain-

ing what amounts the faculties tax itself yielded to the treasury. It appears to have been regarded by all concerned as merely an adjunct of the property tax.

§ 19. *Indirect Taxes.*

It is worth noting that the order of the succession of the general forms of taxation in Massachusetts is the reverse of that in New York. There the general property tax was tardily introduced as a means of easing the burden of indirect taxation, especially that of the excise;¹ here indirect taxes—excises and imposts—were introduced as a means of easing the burden of direct taxation. But direct taxation remained throughout the colonial and provincial periods the principal source of public revenue. In Massachusetts the legislation of the period relating to excises and imposts is so crudely empirical that it defies all attempts at such an analysis as would serve for a basis upon which to formulate the details of the system—if anything so lacking in articulation may be called a system—that grew up under it. There was throughout the colonial period no separate administrative organization for either imposts or excises, the colonial treasurer generally being designated, either alone or in association with one or two other inhabitants, to administer the separate laws as they were passed;² while the auditor-general, during the brief existence of that office, was sometimes called upon to assist in the collection of the duties.³ Further than this generalization, the best that can be done is to give brief synopses of the most important excise and impost laws in chronological order.

¹ Schwab, *History of the New York Property Tax*, p. 22 *et seq.*

² For example: May 19th, 1680, the General Court ordered that James Russell, treasurer, have the whole collection of the rates on wines, liquors, etc., this year, as Paul Dudley had last year, and that John Dudley and John Richards assist him in making contracts, etc.—Felt's *Massachusetts Archives*, Vol. 100, p. 142.

³ Thus he was empowered, May 6th, 1646, to break open cellars and seize smuggled liquors.

§ 20. *The Progress of Legislation.*

On June 2d, 1641, a charge is laid on the beaver trade. On November 13th, 1644, it is ordered that every vintner and other person having a license to draw wine be taxed twenty shillings per butt or sack, and be required to appear before the general court four times per year to swear as to the quantity sold by him and to pay for the same; also, that all wines whole-saled into the country pay the same rate.¹ On October 1st, 1645, English ships and such others as "free us" are exempted from tonnage.² On November 4th, 1646, all retailers of wine must pay such a license fee as the court judge proper.³ On October 27th, 1647, companies for trading with the Indians must pay two pence for every skin purchased.⁴ On May 10th, 1648, to increase the revenue, stricter regulations as to the wine customs are promulgated.⁵ On May 2d, 1649, a schedule of customs on imports and exports between Boston and Plymouth, New Haven and Connecticut is adopted.⁶ On May 30th, 1650, customs to confederate colonies are suspended till the commissioners act.⁷ On October 26th, 1652, the old contract on wine impost expiring, all bidders for a new one are required to meet the deputies and agree upon terms.⁸ On May 19th, 1658, stricter regulations as to imposts are provided; farmers of wine imposts are eased and discharged.⁹ On April 29th, 1668, the treasurer is authorized to farm imposts, beaver trade, excise (wine, malt liquors, etc.) and ammunition trade.¹⁰

¹ Massachusetts Records, II., 82.

² *Ibid.*, II., 130.

³ *Ibid.*, II., 173.

⁴ *Ibid.*, II., 173.

⁵ *Ibid.*, II., 246-'7.

⁶ *Ibid.*, II., 269.

⁷ *Ibid.*, IV., Pt. I., 11.

⁸ *Ibid.*, IV., Pt. I., 111.

⁹ *Ibid.*, IV., Pt. I., 327.

¹⁰ *Ibid.*, IV., Pt. I., 327.

§ 21. *The Systemization of Imposts.*

By far the most important financial legislation of the colony after the systemization of the property tax was that of June 4th, 1669, under the title "Impost." The reason for this act, as assigned in the preamble, was the receipt by the court "of sundry Complaints of much Inequality in the present way of raising Moneys to defray Public Charges." All goods "excepting Fish, Sheeps wool, Cotton-wool, Salt, and such other things as by former Laws are exempted, or otherwise provided for," were now to pay "a just proportion with Estates Rateable in the Country," viz., one penny for every twenty shillings' value—the value to be ascertained by adding twenty per cent. to the value at the place whence imported. The "Master, Purser, Boatswain, or Skipper of each Ship," upon its entering port, and "before breaking Bulk, or Landing any of the said Goods," must certify their value "unto the Country¹ Treasurer or Collector by him impowred." The collector should thereupon enter in a book kept for that purpose "all such Goods, with their several Marks, Casks, Packs, Fardels, Trusses, Chests, Trunks, Cases, and all other things however called or distinguished," and the name of the consignee. Before landing any goods, the owner or importer should "signifie the true and just value thereof, by showing the true and perfect Invoice thereof," to the collector, who should enter the gross sum in his book, and "forthwith demand and receive" the proper rates. "In case of denial or delay of payment, the collector" should distrain the goods. If the invoice were "falsified, concealed, or not produced," "the Treasurer or Collector, with the Select Men of each Town therein concerned," should rate the goods "by Will and Doom, according to their best discretion," but at a rate "not less than four pounds per Tun."

¹Not to the *town* treasurer, as Dr. John Dean Goss says in *The History of Tariff Administration in the United States*, 15, in which he gives a good summary of the above-mentioned legislation, attributing it, however, to the following May.

"For all other sorts of Goods, Hides, Skins, Beaver, Peltry, Butter, Cheese, or other Merchandize," brought in by land, the rate should be one penny per pound, with similar administrative provisions. In difficult or doubtful cases, the officer should "repair to the Governour and Council," who should give directions for the removal of the obstructions.

§ 22. *Treasurers' Records.*

The absolutely chaotic condition of such scraps of accounts as the colonial treasurers have left on record renders fruitless the most patient and laborious attempt to work out from them any systematic statement of the colonial finances. Surely, the disembodied spirit of John Winthrop hovered over the treasurers' books for half a century after that venerable worthy ceased to preside in the colonial councils in his own proper person. After more than fifteen years, during which we have no evidence that any accounts at all were kept by the colonial treasurers, the general court made a move in the direction of securing better financial records. "Whereas," run the minutes under date of October 18th, 1645, "this court hath found by much experience what damage the country sustains for want of keeping exact accounts of all moneys that is due to the country, either by gifts, fines, rates, legacies and otherwise, as also of moneys issuing from the country upon several occasions, they have thought fit this 15th of the 8th month, 1645, to elect and make choice of Leift. Nathaniel Duncan to be auditor-general for this country, and have conferred upon him £30 per annum during the pleasure of the court, and he to give account as often as called by the court."

§ 23. *Duties of the Auditor-General.*

The specifications of the auditor-general's duty that follow under thirteen heads mapped out a wide field of activity for an official from whom great things in the way of financial reform were evidently expected. He was (1) to allow no bill

which did not rightly belong to the colony to pay, or which more properly belonged to other colonies, towns or persons; and being in doubt he was to suspend payment till he could apply to the court; (2) to examine all notes, bills and accounts against the country and agree with those who presented them if the rate seemed too high or no agreement had previously been made; also to pass no bills to the treasurer unless accompanied by vouchers and signatures of such persons as had received or taken up the things for which the country was charged, as ferryages, diet, etc., the treasurer on his part to pay no bill not signed by the auditor-général, who was to be the judge between the creditor and the country, to see that no wrong was done to either; (3) to keep accounts of all his transactions; to summon all creditors of the country to render their accounts and all debtors to pay what they owed, on the pain of prosecution if they failed to do so; (4) to notify the country that all that brought suits in the general court must settle according to the order of the court; (5) to take note of the rates and how they were apportioned among the towns, and make the treasurer debtor for the same; in case of discrepancy between his accounts and those of the treasurer doing the best he could till the court could decide between them; (6) to look after "wafts, strays, goods lost, shipwrecks, whales, etc.," and get the country's part; (7) to keep a copy of all records of the court that concerned him; (8) to agree with colonial employees as to compensation, and see that the treasurer paid them; (9) to agree with state witnesses as to fees, and see about the expenses of patents, bounds, jurisdictions, etc.; (10) to see that the general and particular courts at Boston were provided for; (11) to do the same for the other courts of the colony, and draw on the treasurer for the bill; (12) to see to all other things touching the finances of the colony; (13) to sign no bill to be paid by the treasurer till he received his own pay.

§ 24. *The Laxity of Officials.*

That no permanent improvement resulted from the new arrangement is evident from the scattered entries relating to the treasurer and his accounts. Having appointed an auditor to look after the treasurer, the next thing for the court was to appoint a committee to look after the auditor. On October 7th, 1646, a committee was appointed to inquire into the conduct of constables, marshal, auditor and treasurer, and report eleven months later. On May 10th, 1648, it was ordered that the auditor general and Capt. Tyng take the treasurer's account once every year and present it to the general court, also the account of the present treasurer. On May 22nd, 1650, the court appointed another committee to take the treasurer's account, at the same time complaining that the previous committee had not done its work. That this committee really audited the treasurer's accounts, though no copy of its report is known to be in existence, is established by a reference to it in the report of a subsequent committee (January 20th, 1655). It is established by the same reference and borne out by other contemporary evidence,¹ that no further reports were made for the next five years, although at least two committees were appointed during the interval: the first, May 21st, 1652, being instructed to report at the next session; and the second, August 30th, 1653, including among its members the auditor general, being ordered to publish the gross sums, receipts and expenses.

§ 25. *The First Treasurer's Report.*

At last, however, twenty-eight years after the founding of the colony, and ten years after the commencement of a series

¹ "We intreate you will please to remember, that it is not long since there was more than an ordinary rate called for, * * but how it reached its end is best knowne to them, whoe had the disposing thereof, for wee never had any account thereof, which wee desire may be given to every town yeerely in perticulars."—Petition of Boston Freemen to General Court, September 1st, 1653. Original in Felt's Massachusetts Archives, Vol. 100, p. 44.

of repeated efforts by the general court, we have a report dated January 20th, 1655, made by a committee of the general court to the colonial secretary. It covers a period of four and a half years, and begins:

"Imp^r we find remayneing due fro the Country on the Balance of the last accompt made in Sept^r 1650 unto severall psons then the sum of Sixteen hundred twentie and three pounds two shillings four penc $\frac{1}{2}$ as it standeth one the Audit^r Gen^r Booke."

The sources and amounts of receipts are as follows:

By half a year's rent wine license Oct., 1650.	£	80
" four " " " " to Oct., 1654	£	640
" two years' custom of wine in year 1653 and 1654 to Oct. @		
£165 per annum	£	330
" so much recd. of several other men for drawing wine which		
was not yearly rents	£	79-13
" several fines Oct. 1650 to 20 Jan. 1654-'5	£	255-19
" so much recd. by Court orders and petitions to Jan. 1654-'5. £		36-12
" 18 strings peage for Indian tribute @ 6 per d.	£	45
" entry of actions to Jan. 1654	£	100- 1- 6
		<hr/>
	£	1,567- 5- 6
" Rates recd. 1650.	£	928-18- 0
" " " 1651.	£	1455-17- 9
" " " 1652.	£	1020- 2- 3
" " " 1653.	£	1991-17-11
" " " 1654.	£	1174- 0- 2½
		<hr/>
Total	£	8138- 1- 7½

The disbursements during the same time, added to the previous deficit, being £9237 17s. od., the committee find the present balance to be £1099 15s. 4½d. in favor of the treasurer.

§ 26. *Administrative Paralysis.*

In October, 1656, the auditor-general resigned his position; but he was prevailed upon to remain in office till the next session of the general court, when his resignation was accepted and the office abolished (October 23d, 1657). From

this time on till the annulment of the colonial charter the organization of the financial administration remained the same as it had been at first; and the records show with tiresome continuity, the same inefficiency on the part of the treasurer in keeping accounts, the same neglect of duty on the part of auditing committees appointed from time to time, usually every two or three years, or when, as often happened from wars or other causes, the treasury was exhausted, and the same complaints, entreaties, threats and fruitless devices on the part of the court when its orders to treasurers and committees were disregarded. In 1665 the court began a determined campaign looking toward the production of the treasurer's accounts once more before them. October 11th, an auditing committee was appointed as usual; May 23d, 1666, the same committee, having as usual made no report, was continued and urged to bring in its report "as soon as the treasurer is ready;" October 9th, 1667, a new committee was appointed, and entreated to take the treasurer's account and report to the court; October 23d, 1668, the court grew emphatic, "ordering and enacting" that the committee then appointed do report forthwith; finally, November 7th, 1668, the last committee did make a report with great ceremony, having the governor attest it with his seal; and at the treasurer's request he and his heirs were forever discharged from any claims by the colony.¹ After this the pressure of the Dutch and Indian wars of the '70s brought out more frequent reports; but the same loose administrative methods prevailed in the main through the colonial period.²

¹ Original discharge filed in Felt's Massachusetts Archives, Vol. 100, p. 128.

² Here is the report of an auditing committee, of the later colonial period:

"In obedience to an order of ye Honored Genl Court, Dated May 19: 1680 Wee ye Subscribers met at the time Appointed to puse ye Country Treasurers Accompts, & accordingly proceeded Soo farr as we thought necessary unless long time be given for Examining it in ye pticulars, ye Accots being very Voluminous Comprised in flower Large Leagors, But soo farr as wee Examined, And upon consideracon of ye whole doo judge ye Accots to be just, & Cap^t. Hull & Cap^t.

§ 27. *A Treasurer's Troubles.*

That the trouble about these records was not all due to the reluctance or inability of treasurers to make reports is plain from the following petition, the original of which will be found in Felt's Massachusetts Archives.¹

To the Hon^{ble} Genrall Court Sitting in Boston, 7th Novemb^r 1683.

The Petition of Judith Hull & Samuel Sewall Administr^{rs} of the Estate of the late John Hull Esq^r sometime Treasurer dec^d
Humbly Sheweth,

That whilst the s^d m^r Hull served the Country in y^e Office or Imploy, as Treasurer for the warr and Treasurer of the Country hee did in the respective years from Sept^r 1678, to October, 1680, draw up sevrall accompts of Ballance in order to the passing his accompt that by reason of the other weighty affaires of the Country was deferred from Court to Court, untill the s^d accompt hath amounted to a very great sum, of which hee could not obtain a settl^{ment} in his life time:

How faithfull^y hee approved himselfe and ready to serve the Country both with his Estate and in person, is well known to many, and labored under the weight of the accompt with his own hand, untill weakness of body and the bulke thereof necessitated him to take in Captⁿ Daniel HENCHMAN to his assistance, the accompt being of such nature and so vast, as could not be carried on but by keeping accompt of Species (there being above twelve thousand debendures orders and other acco^{ts}

HENCHMAN making oath thereto may be allowed by the honored Court, the Ballance due to y^e Treasur^r p said Acco^t is Seaventeen hundred Seaventy three pounds & eleven pence money, the Said Treasurr informes y^t Seaverall townes are in Arreares for their Rates, though Credit be given for y^e whole, As also there is one hundred twenty Six pounds Eighteen Shillings four pence due to y^e Country for fines, captures, etc. We finde Captⁿ Hull hath charged fifty two pounds p Annum for flower years, as Captⁿ HENCHMANs Salary for keeping y^e Bookes but nothing for him selfe + Servants All wch wee p^{re}snt to this Honored Court Dated in Boston, October y^e 21th 1680."—Original report in Felt's Massachusetts Archives, Vol. 100, p. 257. To this report the magistrates agreed, but the deputies non-concurred.

¹ Vol. 100, p. 317

and papers filed) and besides by his paines, one of his Relations and two of his Apprentices did labour much in his Service for all of which he hath not charged one penny. That hee was all along many hundred pounds out of his own Estate for the supply of the Country in their streights by reason of danger at home, and occasions of Agency in England, and did preserve their Credit, by his takeing up and engaging for considerable Sumes on their behalfe, besides his own disburs'ts to the lessening of his trade as is apparent.

"Hee hath given the Country credit for all their rates, though much standing out to this day, and no effectuall way for the gathering them in without trouble and charge; By his last Account hee had above Seventeen hundred pounds due to him from the Country, and charged but £425: 15: 4 interest for his own disburs'ts and long forbearance, w^{ch} if it had been many hundred more would not have compensated his damage: What hee hath received of m^r. Russell, w^{ch} went to pay debts, there being great sumes oweing by the Country, is in an account supplementall to the last herewth presented, and therein incerted w^t error^s have been found by those Gentlemⁿ appointed to examine the same; as also by m^r. Henchman, there being as well under as over charg^d some acco^{ts} misplaced, and some debts to persons w^{ch} are found not payable by the country, but the county of Yorke. There is also an additional accompt, drawing up of what receipts and paym^{ts} have been since the accompt given in w^{ch} will shortly be made up.

"The premisses considered yor. Pet. Humbly Pray that this Hon^{ble} Court would please to order the passing s^d accompts, that transaction of so great a Summe as £52500 may not lye unsettled, and to take effectuall care for payment of the balance.

"And as in duty bound yor. Pet^{rs} shall pray &c
"SAMUEL SEWALL."¹

§ 28. *Currency and Banking.*

The inconvenience of making exchanges by barter, even to the slight extent of providing themselves with such necessar-

¹ Hull's accounts were finally inspected and a balance of £545, 3s, 10d³, found due him by the committee, November 27th, 1683, and ordered paid by the General Court. See documents in Massachusetts Archives, Vol. 100, p. 319 *et seq.*

ies of life as they did not individually produce, was early felt by the colonists in Massachusetts. Like the planters of most of the Anglo-American colonies, they had declared that the desire to convert the Indians to Christianity was their chief reason for coming to America. But they soon lost sight of this purpose; and when they found themselves driving a brisk and profitable trade with the savages, as well as developing considerable commerce among themselves, they turned anxiously to the consideration of the question of currency. Wampumpeage and beaver-skin money, even when added to the scanty supply of English and Spanish coin which the early colonists possessed, and which was continually flowing away from them in exchange for commodities of European manufacture, served but poorly to eke out the circulating medium to a quantity barely sufficient for the commercial needs of the community. It is known that as early as 1652 the general court of Massachusetts was considering "all sorts of trading," and "the best ways of improving the same;"¹ that the questions relating to "raiseing a *Banke*," and to "monies in regard to the badnesse of it, or highnesse or lownesse of it, with very many other matters tending to the promoting and well regulating of trade"² had been discussed without and within the legislature; and that about the same time "for some years paper bills passed for payment of debts."³ "Under what association or on what security these bills were issued, does not appear. The establishment of a mint, May, 1652, probably put a stop for a time to any movement towards 'raising a bank.' The author of 'Severals relating to the Fund' alludes to some such movement, but 'before anything was brought to effect,' he 'was called to Ireland,' and discontinued his endeavors to promote the banking project."³

¹ Massachusetts Records, III., 267; IV., Pt. 1, 86.

² Massachusetts Archives, quoted by Felt, *Massachusetts Currency*, 33.

³ Trumbull, *First Essays at Banking*, 7-8.

§ 29. *The Colonial Mint.*

The history of the Massachusetts colonial mint is too well known to require repetition here. It is easy from the vantage ground of our present knowledge of the science of finance to point out mistakes in the details of the management of this unique institution in American colonial history.¹ The unscientific shape and finish of the Massachusetts coins, especially the earlier ones,² and the extravagance of the contracts with Mintmaster Hull,³ are legitimate subjects for criticism; and the policy of undervaluation as compared with the English standard,⁴ while prompted by an intelligible motive, could only work to the disadvantage of the colony in the end. Yet justice requires us to declare that the mint on the whole was of immense advantage to the colony. Established at a time

¹ Chalmers says that Maryland had a mint in 1662; but Thomas Hutchinson, afterward governor of Massachusetts, writing of a New England shilling and sixpence which he was sending as curiosities to a correspondent in England, in February, 1761, says "no other colony ever had any coin." Quoted by Felt, *Massachusetts Currency*, p. 49, n.

² "For forme flatt and square on the sides, and stamped on the one side with *NE*, and on the other side, with the figure *XII*d, *VI*d, and *III*d, according to the valew of each peece, together with a privy marke, which shall be appointed euery three months by the Gouvernor, and knowne only to him and the sworne officers of the mint." *Massachusetts Records*, May 31st, 1652, quoted by Felt, *Massachusetts Currency*, p. 31.

³ In 1652, "The mint master, for himselfe and officers, for their paynes and labour in melting and refining and coyning, is allowed to take one shilling out of every twenty shillings which he shall stampe."—*Ibid.* And in 1675, "fueteen pence in the whole for euery twenty shillings, and the said minters to pay into the Treasury of the Country in money twenty pounds per ann."—*Ibid.*, p. 42.

⁴ "The sayd master of the mint aforesaid is hereby required to coyne all the said money of good silver of the just alloy of new starling English money, and for valew to stampe two pence in a shilling of less valew than the present English coyne, and the lesser peeces proportionably."—*Massachusetts Records*, act of May 31st, 1652, quoted by Felt, *Massachusetts Currency*, p. 31. Maryland decides "that their coin, issued from such an establishment, shall be equivalent to English sterling."—Felt, *Massachusetts Currency*, p. 38, apparently on the strength of an assertion of Chalmers.

when the overthrow of the traditional form of government in England had seemed to render uncertain the continuance of the colonial relation between the mother country and the most independent of all her children, and maintained in the face of repeated and unmistakable expressions of royal displeasure, for more than a third of a century the mint served a most useful purpose in the colony by furnishing the inhabitants with a stable, if somewhat depreciated, currency. It fell in the fall of the colonial charter, with the continuance of which the revival of the mint had come to be inseparably associated in the royal mind; but its salutary financial influence was felt in the colony and in New England as long as the rude but honest product of its operation circulated in the channels of trade.¹

§ 30. *Woodbridge's Bank.*

Even while the mint, operated in the face of the king's displeasure, was pouring forth its slender but constant stream of New England shillings and six-pences,² various projects arose for reënforcing the circulating medium of the colonies by the establishment of banks for issuing paper money.³ An attempt made in 1664, by the author of "Severals relating to the Fund"—the Rev. John Woodbridge, if we may accept the conclusion of so distinguished an antiquarian as Dr. J. Hammond Trumbull—to interest influential merchants in a plan which he had long had in mind⁴ for "a way of trade & banke without money," is known to have been without practical result. A draught of his scheme in the shape of a "Proposal" pre-

¹ "However the mint was thus absolutely terminated, yet the products of its operation were long current in our country. Down to the Revolution of our Independence, they were often seen, and passed readily in business transactions, with other coin." —Felt, *Massachusetts Currency*, 49.

² The coinage of threepences was not long continued.

³ For some account of a scheme of Gov. John Winthrop, of Connecticut, for such a bank, see Trumbull, *First Essays in Banking*, 8-9.

⁴ Since 1650. See *Severals relating to the Fund*.

sented by the author to the colonial council "about three years after this" and embodied in "Severals relating to the Fund," reveals the nature of the project. It is entitled: "A Proposal for erecting a *FUND of Land*, by Authority, or Private Persons, in the nature of a *Moncy-Bank*; or *Merchandise-Lumber*, to pass Credit upon, by *Book-Entries*; or *Bills of Exchange*, for great Payments; and *Charge-bills* for running Cash. Wherein is demonstrated, First, the necessity of having a *Bank*, to enlarge the *Measure of Dealings* in this Land, by shewing the benefit of *Money*, if enough to mete Trade with; and the disadvantages, when it is otherwise;" and "Secondly, That Credit pass'd in *Fund*, by Book, and Bills (as afore) will fully supply the defect of *Money*. Wherein is related, of how little value *Coin*, as the Measure of Trade, need be, in itself; what Inconveniencies subject to. The worth a *Fund-Bill*, or Payment therein, is of: & not of that Hazard."¹ The author's "narrative" of how the plan was put into practice is wanting in the only copy of "Severals relating to the Fund" which is known to have been preserved.² "Enough remains, however," says Doctor Trumbull, "to establish the facts, that a 'Fund of Land' or bank of credit was started in Massachusetts in March, 1671, and was 'carried on in private for many months'—though without issue of bills, and that, ten years later, a private bank of credit was established and began to issue bills in September, 1681. Of the result of this enterprise we have no information—except in the assurance that it did not ruin its projectors."³

§ 31. *Blackwell's Bank.*

Five years after the date last mentioned, John Blackwell, of Boston, "on behalf of himselfe and divers others, his participants, as well in England as in this Countrey," laid before President Dudley and his council a proposal and "Constitution,

¹ Quoted by Trumbull, *First Essays*, 10.

² See Bibliography.

³ *First Essays*, 12.

Modell Frame of Rules and Orders requisit, and to be observed, in the erecting and maintaining of a Bank of Credit Lumbard and Exchange of Moneys by Persons of approved Integrity, prudence & estates in this Country, wherein such a foundation is layd for delivering out Bills, or giving Credit, on such Real Estates of Lands, as also personal Estates of goods and Merchandizes not subject to perishing or decay." Blackwell had been treasurer of the army under Cromwell, and after his arrival in Boston in 1684, commissioned by "divers persons in England and Ireland, gentlemen, citizens, and others, being inclined to remove themselves into foreign parts," had become intimate with Dudley. His proposal and constitution having been reported upon favorably by "the Grand and Standing Committee, consisting of divers eminent & worthy persons, Merchants and others," to whom it had been referred, the president and council on September 27th, 1686, judging "the said undertaking is not only lawfull to be managed by any of his Majesties subjects, as any other calling, but will tend much to his Majesties service, and the benefit of these parts," "do therefore * * * own the sayd proposall as a publique and useful invention for this Countrey," and "thinke fitt in his Majesties name to declare our Approbation, Allowance, and Recomendation thereof."¹ All that has thus far been ascertained concerning this association, the first chartered bank in Massachusetts, is contained in a brief reference to it made by the anonymous writer of a rare pamphlet printed in 1714:

"Our Fathers about Twenty-eight years ago, entered into a Partnership to circulate their Notes founded on Land Security, stamped on Paper, as our Province Bills, which gave no offence to the Government then," etc.²

¹ Original in Felt's Massachusetts Archives, Vol. 126, pp. 104-'7.

² Quoted by Felt, *Massachusetts Currency*, 47, from *Boston Athenæum Tracts*, C. 121, and by Trumbull, *First Essays*, 14, from "Letter from one in Boston to his Friend in the Country, in answer to a Letter to John Burrill Esq. Speaker to the House of Representatives, for the Province of Massachusetts Bay in New-England," Boston, 1714, pp. 37.

Dr. Trumbull believes that it did not survive the presidency of Dudley, as Blackwell, the prime mover of the enterprise, left Boston with a commission from William Penn, as governor of Pennsylvania, in November, 1688, and did not return till 1690, before the end of which year the colony of Massachusetts took to itself the office and obligations of a "bank of credit."¹

§ 32. *The Colonial Finances.*

What, now, was the financial condition of the colony under the system the development of which has been described? When, after seven years of struggle and privation, the victory over the stubborn forces of nature upon an inhospitable shore was fairly won; when the land, under careful tillage, began to produce more than was sufficient to support the inhabitants in comfort; and commerce with the West Indies, the wine islands, the southern American colonies and with England began to spring up: with a financial system providing for a revenue from both static and dynamic taxation—did the colonists begin to realize in their growing commonwealth the blessings of financial independence and stability? Nothing is more certain than the answer to this question. It must be confessed that not only during those earliest years when the colony, like ancient Rome in the first period of her history, was struggling for existence, but all through the period of the colonial charter, through the period of the provincial charter, through the period of the continental revolution, Massachusetts was convulsed with financial crises whose magnitude increased with the growth of the commonwealth and whose frequency did not diminish in an equal ratio. With the inexhaustible resources of a virgin soil, of waters teeming with fish, of forests filled with game, with all the useful and valuable, though for the most part raw, materials of a constantly developing country at hand, and with neither civil nor ecclesiastical tyrants to hamper the growth of the commonwealth, the colony was yet

¹ Trumbull, *First Essays*, 14.

destitute of those reserves of material force—the result of a financial system well developed and well administered—which have enabled states poorer than Massachusetts was to withstand successfully severer financial strains than she was ever called upon to endure.

§ 33. *Causes of Instability.*

The chief causes of this instability of fortune which was particularly characteristic of the colonial period are not far to seek. They were not the poverty of the richest colony in New England, not the inadequacy of the best tax system in America. They were, first, the improvidence of the people, as reflected in the financial legislation of their representatives; secondly, the weakness and irresolution of the financial administration; and thirdly, the custom of receiving "specie" in payment of taxes.

It was doubtless the fear of encouraging in however slight a degree the establishment of centralized and irresponsible power such as that from the exercise of which the colonists suffered in the mother-country, that dictated the hesitating, hand-to-mouth policy displayed in all the colonial and provincial legislation, but especially in the laws pertaining to taxation. The practical disadvantages of such a course were felt in many ways, not only in Massachusetts but in England, where, at a later period, the lords of trade objected to it as highly embarrassing to both countries. The effect of the practice upon the condition of the colonial treasury was particularly bad, as it encouraged the people to put off the payment of taxes; hoping, like Mr. Micawber, that something would turn up to do away with the necessity of paying them at all.

The conflict in the minds of the early legislators between the desire on the one hand to make the tax system effective, and the temptation on the other to yield to solicitations for exemptions, to which a recent writer has called attention as

characteristic of the legislation of New York in the eighteenth century,¹ is no less obvious in the financial legislation of Massachusetts in the seventeenth. The frequency with which these requests from towns, parishes and individuals were granted, between the loss of the sums directly remitted and the losses entailed through delays on the part of taxpayers, which like the policy above mentioned, it did much to encourage, resulted in large depletions of the public revenues.

§ 34. "*Specie*" Payments.

If anything more was needed to minimize the results obtained under the colonial system of taxation, it was found in the custom of receiving "*specie*" for taxes, which prevailed from the earliest times. By "*specie*" or "*country pay*" was meant whatever kind of produce or even live stock the taxpayer had to offer. The embarrassments experienced in the practical operation of a financial system in which the medium of payment was subject to material diminutions in value early led to the repeal of the law authorizing the experiment of allowing taxes to be paid in wampum. That the infinitely more troublesome and wasteful custom of permitting the payment of taxes to be made in "*specie*" was tolerated long afterward, is without doubt principally due to the reluctance on the part of the colonial legislators to discommode individual constituents, of which mention has already been made. The effect of its continuance upon the treasury was in every way disastrous. From the moment the taxpayer unloaded his "*specie*" upon the constable until the treasurer actually had in his hand the money ultimately realized from the sale of it, there was nothing but a succession of deteriorations and

¹ "The tax legislation of the last century was characterized on the one hand by a desire to make the existing tax system more effective, and on the other hand by the anxiety it displayed not to hurt the feelings of the tax-payer."—Schwab, *History of the New York Property Tax*, 60.

losses.¹ From the scanty figures preserved in the treasurer's records, it appears that from January 1st, 1689, to April 17th, 1689, a period of three and one-half months, the losses to the treasury from the sale of 9,977¾ bushels of grain were no less than £99 1s 3d, or a rate of nearly £400 per year.

§ 35. *The "Usurpation."*

The six years intervening between the nullification of the first charter of Massachusetts Bay² and the granting of the second³ were years of political violence in New England, and the few financial records of the period that have been preserved are scattered and fragmentary. But the treatment which the colonists received at the hands of Dudley, and especially at

¹ See representation of John Pyncheon to the General Court as to the loss of a cargo of peas in the Connecticut river, sent for taxes to Springfield, Felt's Massachusetts Archives, Vol. 100, p. 441. Also

"An Account of Damages Sustained by Eleazer Gyles and Abraham Cole late Constables of Salem at the time of the Indian Warr Anno 1676 in the collecting and paying out of the Rates by them received—being 16 Single Country-Rates Amg to about £1200.

Imp	By loss of measure in the severall graines recd by us, about 80 bushells	£15-00-00
	By loss in the fall of the price from the time of or collect- ing unto or paying it out again by bills drawn upon us from the Tr the warrants ordering in the first ten rates to receive Indian at 3/6, wheat at 6/8 and so proportionable, and wee could not put it off again, for payment of the Trs bills but at 18d, 20d and sometimes 21d for Indian, and wheate 5d per bush!! wee judge or loss could not amo to less then	£38-00-00
	By payment of Storage for grain [thus?] lying in or hands neer two years	£10-00-00

£63-00-00."

The magistrates agreed to abate the petitioners £30, but the deputies "consented not." See the original in Felt's Massachusetts Archives, Vol. 100, p. 259.

² June 18th, 1684.

³ 1690.

the hands of Andros, was not such as easily to have been overlooked by those who suffered from it, nor forgotten by those who came after them. The royal commission to Sir Edmund Andros as Governor-General of New England¹ gave him authority, by the consent of a council appointed by himself and removable at his pleasure, "to impose, and assess, and raise, and levy, such rates and taxes as you shall find necessary for the support of the government."² An order of March 3rd, 1687, the text of which has been preserved, signed by Andros in the teeth of the opposition of his council, shows that the Governor-General retained the method of assessment by a commissioner in each town acting with the selectmen, as well as the other main features of the tax system which he found in operation in Massachusetts. The expenses of Andros's government are stated by Hutchinson not to have been excessive; it was against what the colonists regarded as the exercise of power usurped, not alone in his sitting in the governor's chair at all without the charter, but in his utter disregard of the expressed will of his own council,³ rather than against the amount of the financial burdens imposed by him, that they so vigorously, though ineffectually, protested in 1687. The greatly increased expenses of the government during the second year of his administration, due to the outbreak of a war with the Indians, were more willingly allowed by the council and borne by the people in the presence of the common foe.

§ 36. *An Interesting Document.*

The most interesting financial document of this period that has come down to us is a mere fragment of a report, showing that while the seventeen hundred polls over sixteen years of age, in Boston, in 1688, were assessed, at the rate of twenty

¹ 1686.

² Felt, Statistics.

³ Felt, Statistics, 264.

pence each, an aggregate of £124. 18s. 4d., the rateable estates of the town for the same year, assessed at the rate of one penny per pound, yielded no more than £83, 4s, 8¼d. We know not whether the above figures represent the state of affairs existing in the other towns of the colony; nor can it now be ascertained to how great an extent the undervaluation of property by the assessors was carried, in view of the unpopularity of Andros's government. But when the people of a community are subjected, whether by an authority legally or illegally constituted, to a poll tax which is, in any event, nearly fifty per cent. greater than the tax upon property, it is certainly time that a new financial régime be inaugurated in that community. Add to this the enormous fees exacted by the government for all ministerial services,—the fee for the probating of wills, for example, being no less than fifty shillings, in addition to the expenses of a journey to Boston, while that for confirming patents of lands issued under the charter, and now declared void by Andros, on the ground that the charter itself had been nullified, amounted in some instances to fifty pounds, and it would seem that the measure of administrative iniquity was filled up.

§ 37. *The Downfall of Andros.*

Not all the astuteness manifested by Andros in graduating his patent-fees according to time and circumstances and people and estates could screen him from the accumulating wrath of the colonists in his attempts to extort from them a sum so great that, according to a computation made at the time, not all the personal property in the colony would have been sufficient to pay it had the charges for all the new patents been made at one time. The accession of William and Mary to the throne of England was the signal for the seizure and imprisonment of Andros and his lieutenants and the re-establishment¹ of the charter government; but the people of

¹ June 22nd, 1689.

the colony had hardly had time to manifest their satisfaction at the overthrow of their oppressor, by cheerfully voting twenty rates¹ (a much larger number than had ever before been voted at a single time) to defray the expenses of the Indian war and by other acts of self-denial, when the arrival of a new charter², uniting under a single government the colonies of Massachusetts Bay and Plymouth, together with Maine, Nova Scotia and other vast tracts of territory to the north, inaugurated a new financial, as well as political era in the history of what now became the province of Massachusetts Bay.

§ 38. *Condition of the Finances.*

The unexpectedness of Sir Edmund's involuntary withdrawal from the country may be accepted, in his behalf, as a sufficient explanation of the confused condition in which the public accounts were left by that event. Among those features of the Massachusetts system with which he saw no reason to interfere, upon assuming the government, was the custom of permitting the colonial treasurer to advance to the government as much money as he was able and willing to spare, and to wait for reimbursement till the general court should order a tax. When Treasurer Usher, through this process, reached the bottom of his purse, Sir Edmund drew further supplies from the merchants of Boston and others, issuing upon his own official responsibility debentures for the amounts so obtained. Both these practices entailed considerable trouble upon the new government after Andros's downfall.³ The court made no objection to the payment of the debentures

¹ November 7th, 1690.

² 1692.

³ For an example of the good number of petitions that were presented to the general court for payment of the Andros debentures, see the one dated January 14th, 1693, in Felt's Massachusetts Archives, Vol. 100, p. 452, from seven inhabitants of Boston, merchants and others, for the payment of debentures given by the late government for money lent, and vessels and other property impressed for service against the French and Indians.

where it was plain that the supplies for which they had been given had been used in the defense of the country.¹ There was, however, less promptness in allowing the late treasurer's accounts,² concerning the settlement of which no little corres-

¹ In 1701 the report of a committee appointed in July, 1699, and since then several times continued, to settle up and issue debentures for the debts incurred by Andros, gave the aggregate of such debts as £5882 os. 11d. Felt's Massachusetts Archives, Vol. 101, p. 214.

² On March 22d, 1693-4, a committee of the council appointed to examine the accounts of the late governor, Sir Edmund Andros, and the late treasurer, John Usher, "Referred by order from the Rt Honble the Lords of their Majtys most Honble Privy Council, unto the Examinacon" of the governor and company of Massachusetts Bay, reported that they had inspected the accounts presented by Usher, beginning May 25th, 1686, in the time of the president and council, and ending July 1st, 1690; that they found due Usher £851 2s. 10d.; and that they found "standing out" of the several rates then made £798 17s. 3d. beside £27 9s. outlawed by time. Upon consideration of this report, and a further examination of the accounts of Usher, exceptions were taken to the following items in the account: First, to £4,286 9s. 4d. salary to Andros "the moneys so applied being drawn out of the treasury by his own orders, no advice and consent of the Council appearing for ye same." Secondly, to the charge of 5 per cent. commission on the salary of the treasurer, amounting to £700 or upwards, "there appearing no order of the Governor and Council for allowing of the same."—See Felt's Massachusetts Archives, Vol. 101, pp. 1, 2, where also Usher's accounts, apparently in his own hand, are given *in extenso*. A year later, "his majesty's command given at the council chamber at Whitehall, 26 March 1694, to proceed to a final examination of the accounts" of Usher "and satisfy him out of the public stock, for the balance due him for his account pursuant to an order in council of 12 October 1691, or else to return an account of their proceedings and their reasons for not having complied," produced no other result than a re-statement of the former objections to the items of Andros's salary and his percentage upon that of the treasurer, to which was now added the claim for £683 11s. 6d. for the surveyor and auditor general. "As to the Minute of Council relating to Sr Edmd Andros's Salary, dated ye 17th of March 1688," says the draught of this paper contained in Felt's Massachusetts Archives, Vol. 101, pp. 11-14, "[it] mentions no Sum in gross, nor what his Salary is per anno, no time when it commences, nor any waies directs how either of them may be ascertained; but is Entered onely in these words that is to say Ordered, That the Treasurer do Satisfy his Excy, for his Salary out of his Majtys Revenue till Xmas last past. Yet the account is charged with £750 as paid for one year's salary five days after his arrival in the Government, and £750 at the end of each half year for one year following." The paper also objects to certain items as not belonging properly to

pondence between the new government and the lords of the English privy council was found to be necessary.

the province to pay, to mistakes in the reckoning of time, and to the addition of 25 per cent. to make the account sterling. There is another and neater though less legible draught of this document in Felt's Massachusetts Archives, Vol. 101, pp. 18-19, which advances still other objections; but this draught has no signatures. On March 17th, 1702-3, a report of a committee on John Usher's petition allowed him £187 15s. 5d.; but there was a non-concurrence. On June 27th, 1702, upon petition of David Jefferies, attorney for John Usher, another committee was appointed to go over the whole matter and all the records again.

BOOK II.

THE PROVINCE OF MASSACHUSETTS BAY.

§ 39. *Opposition to the New Charter.*

At no period in the history of Massachusetts has the vital relation that exists between the political and the financial life of a community been more clearly shown than in the years of financial perturbation that followed the reorganization of the government under the provincial charter. Through more than sixty years of alternate neglect and interference, the colonists had learned to take substantial advantage of the vagueness of the provisions of King James's charter, to the increasing impairment of the royal prerogative. The new instrument, while it sextupled the territory of the colony and greatly augmented its resources and importance, yet, in the matters of the appointment of the governor, the constitution of the legislature and the reservation of the veto power, made it far more dependent than before upon the royal will. At the same time it greatly increased the responsibility and the difficulty of administering the government. The dissatisfaction of the people at the refusal of the new king and queen to tolerate a continuance of the old order of things was much more general and intense than historians have realized.¹ It is here that we are to look for the beginnings of that feeling of separation

¹ "There is a general buzzing among the people, great with expectation of their old charter or they know not what; such was the ominous message of Andros to Brockholst, with orders that the soldiers should be ready for action."—Bancroft's *History of the United States*, Edition of 1882, I., 599. "Of fifty-four towns, forty certainly, probably more, voted to reassume the old charter. Representatives were chosen, and, on the 22d of May, Massachusetts once more assembled in general court."—*Ibid.*, I., 600.

between the people and the government which showed itself throughout the provincial period, partly in a growing jealousy on the part of the popular branch of the legislature, with reference to the policy of the governor and his council, partly in the reluctance of the people to obey many of the laws, especially those relating to the raising or expenditure of moneys, which they believed were made in the king's interest rather than in their own, and partly in the origination of a large amount of automatic legislation, by which it was fondly believed that laws repugnant to the public sense could be made to execute themselves. Combining with other influences, it ended only with that disturbance of political relations with the mother country known in history as the American Revolution.¹

§ 40. *The Charter goes into Effect.*

But the new charter had come, and it had come to stay: they must accept it in good faith, and do the best they could with it. The king in a spirit of conciliation appointed to be the first provincial governor Sir William Phips, a native of New England, and a soldier who had greatly endeared himself to the people of Massachusetts as commander of their troops in the late war with the French. Moreover, the condition of the country at the moment was one calling for united effort. As in the days of Andros the common danger of an Indian war had constrained the people to support the government in spite of their abhorrence of the man, so now a combination of conditions unfavorable to any violent manifestation of dissatisfaction—the emptiness of the colonial treasury, the embarrassment of almost continuous Indian wars lasting down to 1714 and finally the great fire of Boston in 1711—led them to forget, or at least to overlook those objectionable features of the charter which in more prosperous times they would have erected into mountains of difficulty, and upon which,

¹ Cf. Felt, History of Massachusetts Currency.

indeed, as after events too plainly showed, they had good reason to look with a suspicious eye. The organization of the government under the new charter meant the expansion, the systemization and the invigoration of all its functions. Above all, it meant a great increase in public expenditures and the creation, upon principles of equity and economy, of a correspondingly augmented revenue, all but an infinitesimal portion of which must come from the people themselves. Such was the financial problem that confronted the new government; to its solution they gave their immediate and earnest attention.

CHAPTER I.

DIRECT TAXATION.

§41. *Early Provincial Legislation.*

As soon as the new provincial legislature had provided against the interruption of the business of the community by continuing all the local laws of the late colonies of Massachusetts Bay and New Plymouth that were not repugnant to the laws of England nor inconsistent with the provisions of the provincial charter, they turned their attention to financial matters; and of the nine other acts—all important—passed by them at their first session no fewer than five were purely financial. There were arrears of "public assessments," as well as of "town and county rates," levied by the late governments; and for the collection of these two special acts were passed. The fourth act of the session grants to their majesties an assessment upon polls and estates; and the fifth an impost, excise and tonnage upon shipping; while another prolongs the life of the bills of credit issued by the late colony of Massachusetts Bay. It is with the history of direct taxation in the province that we are first concerned.

The brief but important tax act of June 24th—July 2d, 1692,¹ contains but two variations, neither of them important, from the forms with which we are already familiar as characteristic of the tax system of Massachusetts Bay for the fifty years of its history immediately preceding the Andros period. The class exempted from the payment of the poll tax was enlarged so as to include not only settled ministers and grammar-

¹ 1692-'3, c. 5.

school masters, but also members of the council, all persons devoted to the ministry and students of the college; and the property tax was assessed in the form of a large proportion—twenty-five per cent.—of one year's income from all personal and real estate. The act may thus be taken as an epitome of the colonial system of taxation. But the promise that seemed to be held out by its passage, of a continuity of financial activity, was far from being fulfilled in the history of the next few years.

§ 42. *Failure and Reform.*

It was due undoubtedly to the causes above mentioned,¹ rather than to any failure on the part of the tax officers or of the people to understand the provisions of the simple act of June 24th–July 2nd, 1692²—an excuse which the government, however, kindly advanced for them—that the act proved so great a failure in execution under the new conditions. The following December a supplementary act was passed, four times as long as the previous one, and full of minute provisions, some of them extraordinary ones, for reassessing and collecting the former tax, together with an additional sum made necessary by the embarrassment in which the government now found itself. Thus the first tax act under the new charter, instead of becoming, as its framers doubtless expected it would, the opening act of a new financial epoch, proved to be the closing act of an old one. The great trouble lay with the assessors, who very generally throughout the province either altogether neglected to make the assessments, or else made them so unevenly that widespread dissatisfaction was the result. The returns to the treasury were wholly inadequate.

It was, more than anything else, to bring this recalcitrant class of officials to a sense of duty that the multifarious and radical changes in the forms of the next seven tax acts were made. Assessors separate from the selectmen, town commis-

¹ § 39.

1692-'3, c. 5.

missioners for county equalization, county commissioners for provincial equalization, county and town apportionment by the general court, oaths for the assessors, property qualifications for the assessors, penalties upon the towns for not electing assessors, penalties upon assessors for not serving when elected, provisions for the election of new assessors in case of death or failure to act, powers to require lists of property from inhabitants, penalties upon inhabitants for not furnishing such lists, duties of the assessors minutely defined, classes of real property enumerated, classes of personal property enumerated and specifically rated, allowance to assessors for time and trouble, solemn injunctions upon towns, assessors and collectors to perform their duties, frantic omnibus sections conferring upon everybody all the powers ever conferred upon anybody and pronouncing upon everybody all the penalties ever pronounced upon anybody—such are some of the expedients which the government was constrained to adopt in quick succession in order to supply the treasury with funds by the taxation of an indifferent, if not unwilling, people, and most of which it as quickly abandoned as being partially or wholly inadequate to that end.

§ 43. *The Turning Point.*

The act of June 27th, 1695-6,¹ may be taken as marking the turning point of this crudely experimental legislation. Beginning with the act of June 17th, 1696,² eight successive tax acts show but little variation till in the general act of March 20th, 1699-1700,³ the legislature committed the province for a period of three years in advance to a system which is thus shown to have worked with reasonable success. This act was revived bodily from time to time, for periods varying from one to eight years, until, by the general act of October

¹ 1695-6, c. 6.

² 1696, c. 3.

³ 1699-1700, c. 26.

3d, 1730,¹ the system was adopted without limit; and it remained without material change throughout the provincial period and well into the present century. The importance of this first decade of the second charter as the crystallizing period of Massachusetts tax legislation is quite likely to be overlooked, even in a careful examination of the different tax acts: it can be fully grasped only after an analysis of the completed system, and a tracing of the history of each of its component parts from its first appearance to its permanent formulation.

§ 44. *The Choice of Assessors.*

The principle upon which the choice of assessors in Massachusetts has rested, not only during the provincial period, but during the colonial and state periods as well, is that of direct popular suffrage in the respective towns. The appointment by the general court, in 1692-'3,² of county commissioners for equalizing the quotas of the towns, and the provisions of the special law of 1694-'5,³ and of the general laws of 1699-1700⁴ and 1730⁵ for the appointment of assessors by the justices of the county were exceptions in the nature of a last resort, the first to extricate the provincial finances from a pressing emergency, and the others to guard against the recurrence of such an emergency. The first financial reform effected under the second charter—and it was an important one—was the substitution of a fixed period of service for the assessors in place of the single levy of the colonial régime. Only two acts of this decade, the first and third tax acts (the second tax act being in reality a part of the first one) direct the treasurer to send out his warrants to the selectmen to call meetings of the voters in their respective towns for the election of a com-

¹ 1730, c. 1.

² 1692-'3, c. 41.

³ 1694-'5, c. 2.

⁴ 1699-1700, c. 26.

⁵ 1730, c. 1.

missioner, in the first instance in each town to act temporarily in conjunction with the selectmen as a board of assessors, and in the second instance to elect a separate board of assessors for that tax. In the act of June 18th-20th, 1694-'5,¹ the assessors of the previous act are again employed; and, beginning with the next act, that of September 14th, 1694-'5,² the period has uniformly been one year.

§ 45. *Changes in the System.*

The election of town commissioners—an office inherited from the colony—to serve with the selectmen in making assessments and to act by themselves as a board of town equalization, was provided for in the tax acts of June 24th, 1692-'3,³ and June 27th, 1695-'6;⁴ but, after recognition as a part of the tax system by the act of March 7th, 1695-'6,⁵ that official disappears forever. Meanwhile the act of November 16th, 1692-'3,⁶ provided for the election of a committee for assessment in each town, at the annual town meeting in March, when other officers were elected.

The tax acts, from that of October 27th, 1694-'5,⁷ to that of July 14th, 1699-1700,⁸ recognize the two systems, selectmen or trustees in certain towns and separate boards of assessors in others as existing side by side; though the act of June 17th, 1696,⁹ is the only one during this interval that specifically authorizes the election of separate boards by towns that prefer

¹ 1694-'95, c. 2.

² 1694-'5, c. 12.

³ 1692-'3, c. 4.

⁴ 1695-'6, c. 6.

⁵ 1695-'6, c. 17.

⁶ 1692-'3, c. 28.

⁷ 1694-'5, c. 16.

⁸ 1699-1700, c. 14.

⁹ 1696, c. 3.

them. With the famous act of March 20th, 1699-1700,¹ however, the dual system was placed on a permanent legal footing.

§ 46. *Number of Assessors; Time of Choice.*

By the important act of November 16th, 1692-3,² for "regulating the townships, choice of town officers, and setting forth their power," the number of selectmen for each town was fixed at three, five, seven or nine. The town commissioner acting with the selectmen, until the disappearance of that official, would make the number even. All acts authorizing or prescribing separate boards of assessors specify odd numbers—three, five, seven or nine—except those of June 18th-20th, 1694-5,³ and March 20th, 1699-1700,⁴ which say "three or more." Evidently the purpose in all these acts was to guard against inconveniences arising intentionally or unintentionally from tie votes.

As to times for choosing assessors, the acts of June 24th, 1692-3,⁵ and June 27th, 1695-6,⁶ direct the treasurer to issue his warrants forthwith for the selectmen in each town to call a town meeting to be held in July following. Other acts employ boards already existing; until the act of March 20th, 1699-1700,⁴ provides for the election of assessors, in towns preferring separate boards, at the annual town meeting in March—a plan that continued throughout the provincial period.

§ 47. *Qualifications of Assessors.*

Coming now to the matter of the qualifications of assessors,

¹ 1699-1700, c. 26.

² 1692-'3, c. 28.

³ 1694-'5, c. 2.

⁴ 1699-1700, c. 26.

⁵ 1692-'3, c. 4.

⁶ 1695-'6, c. 6.

the act of November 16th, 1692-3,¹ above referred to, required the selectmen of each town to be "able and discreet, of good conversation, inhabitants within such town." The acts of June 24th, 1692-3,² and June 27th, 1695-6,³ required town commissioners to be "freeholders." The evident purpose of the general court to include a captain of militia in every pair of county commissioners provided for by the supplementary act of December 15th, 1692-3,⁴ was carried out in the case of every county except York, the court itself naming the commissioners. In no particular is the radical nature of the tax legislation of 1694-5⁵ more plainly shown than in the qualifications which it requires in the members of its separate board of assessors. The conventional qualifications of ability, discretion, good conversation and residence were given a decidedly practical turn by the requirement that every assessor be a freeholder reputed to be worth, in the case of towns of less than forty thousand inhabitants, not less than fifty pounds sterling, in the case of other towns, not less than one hundred, and in the case of Boston, not less than three hundred. The full significance of this requirement will be seen in connection with our discussion of penalties. In this, as in other particulars, the act of June 18th-20th, 1694-5,⁵ went too far. After the next act, which employed the old assessors, all property qualifications dropped out of sight till the act of June 17th, 1696,⁶ which merely required assessors to be freeholders in their respective towns or precincts. After this not only did all property qualifications disappear, but no qualifications whatever were specified. Finally the fundamental act of March 20th, 1699-1700,⁷ again

¹ 1692-3, c. 28.

² 1692-3, c. 4.

³ 1695-6, c. 6.

⁴ 1692-3, c. 41.

⁵ 1694-5, c. 2.

⁶ 1696, c. 3.

⁷ 1699-1700, c. 26.

exacted residence, as did that of October 3rd-7th, 1730,¹ in which condition the matter rested.

§ 48. *Assessors' Oaths.*

Another innovation of June 18th-20th, 1694-5,² aimed at the derelict assessors, was the requirement of an assessors' oath, a feature which, although it was omitted from the mildly reactionary law of October 27th, 1694-5, was revived by the act of June 17th, 1696; and ever since that time it has remained an essential feature of the Massachusetts system. The continual variation in the phraseology of the oaths, though doubtless good evidence of efforts on the part of successive legislatures to goad the assessors to a stricter performance of duty, as similar variations in the form of assessors' oaths in other colonies may be,³ can hardly have accomplished much in that direction, since they really added nothing to the original oath—a promise before God to lay assessments impartially and according to law. The weakness of the act of June 18th-20th, 1694-5,⁴ in making no provision as to when, where or before whom the oath should be taken, was partially remedied when the law of June 17th, 1696,⁵ provided that the oath should be taken before a justice of the peace, or the town clerk in towns where no justice resided; and it was entirely removed by a clause in the laws of March 20th, 1699-1700,⁶ and October 3rd-7th, 1730,⁷ directing the town clerk or one or two of the selectmen of every town, immediately on the election of assessors, to provide the constable or constables of the same with a list of those chosen to be assessors in their respective towns,

¹ 1730, c. 1.

² 1694-'5, c. 2.

³ Schwab, *History New York Property Tax*, 60; *Worthington, Finances of Pennsylvania*, 78.

⁴ 1694-'5, c. 2.

⁵ 1696, c. 3.

⁶ 1699-1700, c. 26.

⁷ 1730, c. 1.

the constables being required "thereupon to summon each of the said assessors to appear at a certain time and place within the space of seven days from the day of their election, before a justice of the peace, if any dwell in such town, or otherwise before the town-clerk thereof, to take the oath above-mentioned." Thus the law remained throughout the rest of the provincial period.

§ 49. *The Duties of Assessors.*

The duties of the assessors—once they have been elected and have qualified—may be considered with reference to (1) the time of assessment, (2) the nature of the list, and (3) the time of return and to whom returnable. *First*, as to the time of making the assessment. The plan of the first few tax acts under the provincial charter, of fixing a date, usually a month or two ahead, not later than which the assessment must be completed, was discarded in 1694, was revived in 1695 and was finally abandoned in 1696, as the accompanying requirement that the completed tax list be delivered to the treasurer by a certain date was found sufficient. *Second*, as to the nature of the tax lists, we find an uninterrupted improvement. The act of June 24th, 1692-'3, is silent on this point. The supplementary act of December 15th, 1692-'3,¹ requires particulars "both of polls and estate within such town, with an addition of all polls and estate which were before omitted, as well noting the names of all persons whom through age and infirmity they expect should be exempted from the poll tax as others." Beginning with the act of June 18th-20th, 1694-'5,² we find the requirement of "the names of each collector or constable in the said town or precinct, and the respective sums to them committed to gather:" with the act of March 15th, 1694-'5,³ the requirement of "distinct and perfect lists, therein setting down every partic-

¹ 1692-'3, c. 1.

² 1694-'5, c. 2.

³ 1694-'5, c. 7.

ular person's name and sum, with a notification thereon of the name of the several constables or collectors for each town or precinct, and the sum which each of them are severally to collect:" and with the act of October 29th, 1697,¹ the requirement of a list in three distinct columns, setting forth "what each particular person is to pay * * * against his or her name respectively; the first column to contain the number of polls for which such person is assessed² and the sum set upon each of them, the second column to contain the housing, land or other real estate for which such person is assessed and the sum set thereupon, and the third column to contain the sum set by them upon such person for his or her personal estate and faculty;" and of a certificate of the name or names of the collector, constable or constables of each town, together with the sum total of the list to each of them committed—such certificate to be delivered to the treasurer. In all cases the lists and certificates were to be certified by a majority of the commissioners or assessors. Since the date last mentioned, with the exception of the enumeration of the separate parcels of "housing, land, or other real estate" of each taxpayer, which has been dropped, the requirements of the tax lists have remained practically unchanged. The extension by the act of June 11th–July 4th, 1707,³ of the duties of the assessors in each town so as to include the assessment of "such town's proportion, also to the county and town charges," "under oath to the discharge of that trust according to the rules and directions in the law in that respect," and "under the like penalty for not accepting and serving as is by law directed for the province tax" would seem to indicate that the machinery for the province taxation was at last working efficiently.⁴

¹ 1697, c. 23.

² Referring to the number of his slaves or indentured dependents.

³ 1707, c. 2.

⁴ Slow as the development of a satisfactory tax system was in Massachusetts, their first general tax law, 1699–1700, c. 26, was passed fourteen years before New York's first one, June 14th, 1713.—Schwab, *History of New York Property Tax*, 56.

§ 50. *The Completion of the Assessment.*

Thirdly, The complicated act of assessment was not completed, at least during the first few years of the provincial period, till the town commissioners had met at the shire towns of their respective counties upon a day fixed by the act under which they were making the assessments, had there perfected their respective lists by a common examination and correction of them, and had finally transmitted them, so perfected, by one of their number chosen for the purpose, to the treasurer of the province. At a later period, if there were no commissioners for the towns, the assessors, whether selectmen or trustees acting as such or a separately elected board, were required to deliver not later than a date invariably specified in the tax acts their certified lists to the treasurer. After the final disappearance of the town commissioner from the tax system, the selectmen, trustees or assessors, as the case might be, were required by the act of June 17th, 1796,¹ to deliver at a date not later than that specified by each act to the collector, constable or constables of their respective towns the perfected tax lists, and to the provincial treasurer their certificates of collectors' or constables' names, and the gross sum apportioned to each to collect. ✓

§ 51. *Difficulties of Assessment.*

If evidence were lacking of the difficulty experienced by the new provincial government in obtaining satisfactory assessors, such evidence would be supplied in abundance by the different provisions of the drastic tax act of June 18th-20th, 1694-'95.² Beside the measures already mentioned, this act provides that "if any person be chosen to said place [of assessor] and refuse to attend such service (which he shall forthwith declare whether he accept or no), he shall pay as a fine five pounds if in Boston, Charlestown, Salem, Ipswich, or

1 1796, c. 3.

2 1694-'95, c. 2.

Newbury, and in any other town forty shillings." A penalty for the neglect by assessors to do the work after taking the oath, unaccountably omitted by the framers of the above act, was introduced into the next one,¹ the following September, in the shape of a forfeiture of the whole sum apportioned to the offending assessor's town, though the penalty for declining to take the oath now drops out. The next tax act² adds the alternative of imprisonment, in case no property of the assessors can be found to be levied upon in satisfaction of the execution. All these penalties are then forgotten for a couple of years, then revived together in two successive acts,³ again omitted,⁴ then applied again with increased vigor for three more acts,⁵ until, in the general act of March 20th, 1699-1700,⁶ and in its successive re-enactments,⁷ and in the general act of October 3d-7th, 1730,⁸ the penalty of forfeiture for refusing to take the assessor's oath, of five pounds for Boston and forty shillings for other towns, and of proportional sums for failing "duly to attend and observe all such warrants as during the time of their office they shall receive from the treasurer and receiver-general of this province, pursuant to any act or acts to be made and passed by the great and general court or assembly of the same, for the assessing and apportioning any province rate or tax upon the inhabitants or estates within the towns whereof they are assessors," became an established feature of the provincial tax system.

¹ 1694-'5, c. 12.

² 1694-'5, c. 19.

³ 1696, c. 16 and 1697, c. 6.

⁴ 1697, c. 23.

⁵ 1698, c. 15, 1698, c. 24 and 1699-1700, c. 14.

⁶ 1699-1700, c. 26.

⁷ 1703-'4, c. 3; 1706-'7, c. 3; 1709, c. 1; 1716-'7, c. 4; 1717-'8, c. 5; 1722-'3, c. 4.

⁸ 1730, c. 1.

§ 52. *Compensation to Assessors.*

It did not occur to the bustling reformers who framed the act of June 18th-20th, 1694-5,¹ that the tax laborer is worthy of his hire. Perhaps it was because the province had not yet emerged from that stage of politico-social development in which the attempt to tax every one according to his faculty "is seen in the enforced participation in the administration,"² that, until the act of June 17th, 1696,³ the assessors received no pecuniary compensation for the performance of their really difficult and thankless task. Beginning with that act, each assessor was allowed two shillings per day "for each day he attended the service;" and with the addition of the adverb "necessarily" before the participle "spent," and of the adjective "whole" before the noun "day," to cut off any chance of the assessors' amassing fortunes at the public expense, the clause allowing them this munificent remuneration was retained until 1730,⁴ when the compensation was doubled.

§ 53. *Collectors: Choice, Number, etc.*

The collection of taxes, though by no means without its difficulties, has been the source of but little trouble compared with that experienced in obtaining just and adequate assessments; and the changes in the plan of procedure in it have been comparatively few and slight. As has already been seen, it is that very ancient and respectable town officer, the constable, who from the earliest times in the Massachusetts colony numbered among his duties the collection of taxes; and the first tax act under the provincial charter⁵ avails itself of his services for this work as a matter of course. The sup-

¹ 1694-'5, c. 2.

² Seligman, *The General Property Tax*, *Political Science Quarterly*, V., 38.

³ 1696, c. 3.

⁴ 1730, c. 1.

⁵ 1692-'3, c. 4.

plementary act of December 15th, 1692-3,¹ among its provisions for improving the tax system, enables the selectmen or assessors in each town, if they see fit, to appoint a collector or collectors. The preference of the people for the separate officer is sufficiently evident; for, though the provision referred to did not extend beyond the tax then authorized, and was repeated but once (June 18th-20th, 1694-'5²), and then only temporarily, till the general tax act of March 20th, 1699-1700,³ gave that officer a permanent place in the system, yet there is no one of the thirteen tax acts passed during the period mentioned that does not incidentally recognize the collector as an officer on an equal footing with the constable.

The acts of December 15th, 1692-'3,¹ and June 18th-20th, 1694-'5,² provided that the election of collectors for the taxes then voted should be by the selectmen and the assessors of the towns where they were chosen; but the general act of March 20th, 1699-1700,⁴ provided that the choice of collectors should be made by the voters, at the same time that they chose assessors and other town officers, viz., at the annual town meeting in March. This still remains the rule. The number of collectors to be chosen was not fixed in any act. The act of October 3rd-7th, 1730,⁵ empowered constables and collectors, though superseded by others appointed in their stead, to go ahead and complete the collection of such taxes as they were responsible for.

§ 54. *General Development.*

It has been shown how, in the history of assessments, the government, in order to frustrate frequent attempts on the part of individual citizens and even of whole towns to avoid the

¹ 1692-'3, c. 41.

² 1694-'5, c. 2.

³ 1699-1700, c. 26.

⁴ 1699-1700, c. 26.

⁵ 1730, c. 1.

payment of taxes, were obliged to follow up the delinquents step by step, minutely prescribing the duties of every officer concerned in the assessment as well as of the taxpayers themselves, and affixing severe penalties for neglect or malfeasance in the case of any one of them, until finally in cases where injunctions and penalties proved alike unavailing the court of general sessions for the county was called in to appoint assessors and force an assessment. It is interesting to note a development almost precisely similar, although one naturally later in manifesting itself, in the case of collections. The development of the provincial tax system was nearly completed during the first decade of the second charter; but like the vulnerable spot in the heel of Achilles, there was still one fatal defect in its machinery for assessing and collecting taxes from people who did not want to pay them; though it was not till after the lapse of half a century that this defect appears to have been discovered, or at least to have been taken advantage of to any disturbing degree. The act of February 8th, 1745-6,¹ recites that "whereas no provision is made in the Act entitled an Act directing how rates and taxes granted by the general assembly, as also county, town and precinct rates, shall be assessed and collected," for appointing collectors or constables where towns neglect to choose them, "whereby, unless there be some remedy, the good design of said Act, to secure the payment of the taxes granted by the general assembly, will be frustrated," the general court now enact that in such cases the sheriff, a county officer, shall collect the rates. In the cases of both assessments and collections, then, it was found necessary to have final recourse to permanent county officers for the efficient carrying out of legislative measures for the taxation of the smaller political units.

§55. *Qualifications of Collectors.*

No qualifications are specified as being required of con-

¹ 1745-'6, c. 19.

stables. The general act of November 25th–December 9th, 1692–3,¹ “for the establishment of forms of oaths,” prescribes the following form for constables :

“Whereas you, A B, are chosen constable within the town of C for one year now following, and until other be chosen and sworn in your place, you do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same, that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of court as are or shall be committed to your care, that you will faithfully and with what speed you can collect and levy all such fines, distresses, rates, assessments and sums of money for which you shall have sufficient warrants according to law, rendering an account thereof, and paying in the same according to the direction in your warrant. And with like faithfulness, speed and diligence will serve all writs, executions and distresses in private causes betwixt party and party, and make returns thereof duly into the same court where they are returnable. And in all these things you shall deal seriously and faithfully whilst you shall be in office, without any sinister respects of favor or displeasure. So help you God.”

The acts above referred to as authorizing the election of separate collectors in those two cases mention only the conventional requirements of “ability” and “sufficiency”; while the general act of March 20th, 1699–1700,² authorizes the choice of “one or more meet person or persons.” Though there is no form of oath prescribed for collectors, nor any reference to such an oath, with the exception of the form prescribed in the general act of November 29th–December 19th, 1720–1,³ which applied only to collectors of local rates, yet the omission of such a requirement was not in accordance with the usual practice of the provincial government.

¹ 1692–’3, c. 35.

² 1699–1700, c. 26.

³ 1720–’1, c. 7.

§ 56. *Duties of Collectors.*

The duty of the collector or of the constable acting as such was twofold; first, to collect from each taxpayer on his list the sum which such taxpayer had been assessed; and, secondly, to pay over all moneys by him so collected to the provincial treasurer. For aiding the collector in the performance of the first of these duties the act of June 24th, 1692-3,¹ gave him, in the case of persons refusing or neglecting to make payment of the sums so assessed upon them, the power of levying the same by distress and sale of goods of such persons, returning any overplus; and the severer act of December 15th-16th, 1692-3,² added the further penalty, in cases where no goods appeared to levy upon, of the commitment of such person by the collector, under warrant from two or more of the assessors, to the common jail, there to be kept without bail or mainprize until payment be made. These severe provisions, thus early adopted, were retained throughout the provincial period with no change except that the power of instituting proceedings against delinquent taxpayers seems by the act of March 7th, 1695-6,³ to have been vested for a time in the provincial treasurer. By a subsequent act⁴ the previous plan was restored.

A date was always fixed, usually from three to ten months ahead, not later than which the constables and collectors were required to make their payments to the provincial treasurer; with which act their labors and the history of the particular tax was completed. For failure to comply with this requirement, the act of June 24th, 1693-4,⁵ imposed a penalty of the payment by the offending collector of ten pounds in money, and all arrears of the assessments committed to him; the act of

¹ 1692-3, c. 4.

² 1692-3, c. 41.

³ 1695-6, c. 17, § 4.

⁴ 1743-4, c. 11.

⁵ 1693-4, c. 4.

December 15th, 1692-3¹ enabled the treasurer "to levy all such sum or sums of money by distress and sale of such defective constable or collector's goods and chattels, returning the overplus (if any there be), and for want of such distress to commit the offender to the common gaol of the county;" and, beginning with the act of June 18th-20th, 1694-5,² the following acts add the phrase, "there to remain until the full payment be made." The further security of making every town responsible for any defect in the returns of its constables, which was included in the acts of December 15th, 1692-3,¹ and June 18th-20th, 1694-5,² was, for some reason, perhaps through oversight, not again repeated until the general act of March 20th, 1699-1700.³

At first the treasurer sent his warrants for assessments and collections directly to the assessors and collectors in the different towns; but beginning in 1696, he was required to send them under cover to the sheriff or marshal of each county, who should distribute them forthwith to the assessors and collectors.

§ 57. *Exclusive Taxes.*

The mind of the provincial legislator was not always clear as to the real difference between an assessed tax and an excise. The early history of the province of Massachusetts furnishes us with a curious example of this confusion in a group of tax laws,⁴ nominally, "for granting unto his majesty an excise upon wines, liquors, and other strong drink sold by retail;" but in reality laying an exclusive income tax—the only attempt at laying an exclusive tax before 1749-'50, when the act of April 20th provided for an exclusive tax upon calashes,

¹ 1692-'3, c. 41.

² 1694-'5, c. 2.

³ 1699-1700, c. 26.

⁴ 1710-'11, c. 11; 1711-'12, c. 3; 1712-'13, c. 2; 1713-'14, c. 2; 1714, c. 2; 1715-'16, c. 9.

chairs, chaises, chariots and coaches. But this act was, for reasons touching other features of it, disallowed by the English privy council.

It is of the essential nature of those taxes commonly called "indirect," including excises, that, being computed at a fixed per cent. of a variable base, the amount of the tax can be only approximately estimated in advance; while in the case of a "direct" tax, either a fixed percentage of a variable base may be required of the taxpayer, in which case the amount of the tax can be only approximately estimated as before; or an ascertained sum may be demanded of him, irrespective of the ratio which that sum bears to the money value of the property taxed. In each of the six acts above referred to, the general court not only determined the whole sum to be raised by the tax, but apportioned that sum among the counties of the province; delegating to the justices of the respective courts of general sessions of the peace, the power to "levy, lay and duly apportion" the "excise" "according to their good discretion to and upon the several taverners, wineholders, common victualers and retailers within their county." But if these assessments as made were not excises neither were they license fees, even though as in each of these acts the renewing of an old license or the granting of a new one was made contingent upon the assessments being paid, for the amounts of fees are fixed being the same for all persons for the same services rendered or the same privileges granted. In the case of these acts, this was rendered impossible in practice by the apportionment among the counties.

CHAPTER II.

INDIRECT TAXATION.

§ 58. *The Organization of Imposts.*

The organization of the force for administering indirect taxes in Massachusetts has always been more simple than that of the force for administering direct taxes. The two great departments of indirect taxes in Massachusetts, in the order of their financial importance, have been the impost (with which may be included tonnage of shipping) and the excises; and in that order we shall take up their history.

The error of the first impost act under the provincial charter¹ of introducing into the customs administration a division of responsibility, in providing for the appointment of more than one "commissioner," was corrected two years later in an act² providing "that there be one fit person and no more * * appointed * * as a commissioner and collector, to have the general inspection, care and management of the said office of impost." From that time until, by the adoption of the federal constitution in 1789, all customs were relinquished by the states to the federal government, the head of the customs administration in Massachusetts was a single officer, though his title was changed by the act of December 9th-10th, 1698,³ to that of "commissioner and receiver." The first act above-mentioned¹ provided for the employment, in addition to the commissioners, of "so many officers under them as they shall find needful." By the act of June 8th-20th, 1694-5,³ provision

¹ 1692-'3, c. 5.

² 1694-'5, c. 1.

³ 1698, c. 17.

was made for the employment of "so many officers under him as the said commissioner, with the advice of the treasurer for the time being, * * shall think necessary for the well ordering and managing of the affairs relating to said office, and the better to prevent frauds;" by that of December 9th-10th, 1698,¹ the number of "deputy receivers," as the subordinate officers were now called, was limited to one for each port beside that in which the commissioner resided; by that of March 27th-29th, 1702-3,² the number of officers was again enlarged to "so many * * as the commissioner shall think needful to assist therein;" while the ultimate form of the subordinate organization of the department was attained when, by the act of December 20th, 1739,³ "a deputy receiver in each port and other places," was authorized.

§ 59. *Commissioners: Appointment; Qualifications.*

In the method of the appointment and commissioning of the customs officers, there was but one change under the second charter. The first customs act⁴ vested the nomination, appointment and commissioning of the commissioners of impost in the governor and council, and the same act that reduced the number of commissioners to one⁵ vested the nomination and appointment of that officer in the general court, while his commission only was to issue from the governor. From the beginning each commissioner selected his own subordinates, although when the number of commissioners was reduced to one⁵ the advice of the provincial treasurer was at least nominally essential to the choice, a limitation which was abandoned in 1698.⁶

No act prescribed qualification for either commissioners or subordinates, the question of fitness being left entirely to the

¹ 1698, c. 16.

² 1702-3, c. 1.

³ 1739-40, c. 13.

⁴ 1692-3, c. 5.

⁵ 1694-5, c. 1.

⁶ The last act in which it was required was 1698, c. 16.

judgment of the appointing authority. The initial customs act of the second charter¹ required that the commissioners and all officers employed by them be sworn "to deal truly and faithfully" in the execution of their duties; the reformatory act of June 8th-20th, 1694-5,² declared that "the commissioners and all other under officers, before their entering upon the execution of their respective offices, shall take the oaths appointed to be taking instead of the oaths of supremacy and allegiance, and repeat and subscribe the declaration," * * as also shall be sworn to deal truly and faithfully in the execution of their respective offices;" but with the act of June 18th-19th, 1697, the simple oath "to deal truly and faithfully therein" was restored to a permanent place in the impost laws.

§ 60. *Duties of Commissioners.*

The only duty specified in the act of June 24th-28th, 1692-3¹ as devolving upon the commissioners was that "to account with the treasurer for all their collections;" the reformatory act of June 8th-20th, 1694-5,² required the commissioner "to keep fair books of all entries and duties arising by virtue of this act, which books shall be open at all seasonable times to the view and perusal of the treasurer. And the said commissioner shall also account with the treasurer, upon oath, for all monies and payments at the end of every three months; the said oath to be administered before the governor and council, and pay in all such monies as shall be in his hands as the treasurer shall demand it." The important act of June 18th-19th, 1697,⁴ omitted the spectacular episode of the second oath before the governor and council, required an accounting as often as the treasurer should demand it and re-

¹ 1692-'3, c. 5.

² 1694-'5, c. 1.

³ The reference is to certain oaths and a declaration provided for in an act of parliament of I. William and Mary, entitled "An Act for Abrogating the Oaths of Allegiance and Supremacy and appointing other oaths," and mentioned in the provincial charter of Massachusetts.

⁴ 1697, c. 3.

quired the commissioner to administer an oath to persons suspected of making short entries. Four years later the business of the customs had increased to such a degree that the commissioner was required to "attend in the office from nine to twelve of the clock in the forenoon, and from two to five of the clock in the afternoon"¹—a practice thereafter substantially continued. It was not till seventeen years later that the statement of the duties of the commissioner took the form which it afterward retained, by the additional requirement that the commissioner keep "a particular accompt of every vessel, so that the dutys, impost and tunnage arising on the said vessel may appear,"² and that he exhibit his books not only to the treasurer and receiver-general, but to "any other person or persons whom this court shall appoint."

The first intimation of a definition of the duties of subordinate customs officers is contained in that clause of the act of June 8th–20th, 1694–5,³ which grants to the single commissioner, then first provided for, the power "to grant them warrants" for assisting in "the well ordering and managing the affairs relating to said office and the better to prevent frauds." An administrative advance was made when the act of December 9th–10th, 1698,⁴ directed the commissioner "to grant warrants to such deputy-receivers for their said place, and to collect and receive the imposts for all wines, liquors, goods and merchandizes that shall be imported into such port, and to render the accompts thereof, and pay in the same to the said commissioner and receiver."

No penalties for non-feasance or mal-teasance were provided for either commissioners or subordinates.

§ 61. *Powers of Commissioners.*

It is in the powers vested in the customs officers in the pro-

¹ 1701–'2, c. 16.

² 1718–'19, c. 12.

³ 1694–'5, c. 1.

⁴ 1698, c. 17.

secution of their duties that the greatest number of important changes was made. It would be difficult to find a better example of what elsewhere in this essay has been called automatic legislation, by which is meant legislation requiring certain things to be done and providing no means for enforcing the requirement, than the act of June 24th-28th, 1692-3.¹ By this first customs act of the second charter no special power whatever was given to the commissioners themselves looking toward the enforcement of the provisions of the act; and the power vested by the act in "such as are impowred or improved by the commissioners," or in "the informer or discoverer," "to search, according to law, all manner of houses, cellars and warehouses," for goods believed to have been smuggled, was hedged about by the requirement that such search should "be made in the day-time, and within the space of one month after the offense supposed to have been committed," "with one constable or more," and "by warrant from the lieutenant-governor or any two justices of the peace within this province (to that purpose first obtained)."

§ 62. *Their Powers Increased.*

The first section of "An Act for the Better Collecting the Impost and Excise, and Preventing Frauds," provided "that such officer or officers as are or shall be impowred and appointed by the commissioners for impost and excise, shall have power and are hereby authorized to enter on board any ship or vessel, there to make search, or to attend the unloading of any such ship or vessel, the better to prevent fraud, and to secure the true payment of the duties, so by act or acts for or relating to the impost and excise is imposed." By the act of June 11th-22d, 1695-6,² the commissioner was empowered to "sue for and recover, in any of his majestie's court of record, or before any justice of the peace, where the matter is not

¹ 1692-'3, c. 5.

² 1693, c. 5.

³ 1695-'6, c. 1.

above his cognizance, any sum or sums of money that are or shall grow due according to agreement made for any of the aforesaid duties, where the party or parties with whom such agreement is or may be made, shall neglect or refuse to pay the same." The strongly reactionary law of December 9th-10th, 1698,¹ brought about by the large decrease in the income from customs since the passage of the impost act of the previous June,² substituted in place of all the above the simple power of the commissioner "to sue the master of any ship or vessel for the impost or duty for so much of the lading of wines, liquors, goods, wares, and merchandizes imported therein according to the manifest by him to be given upon oath as aforesaid, or shall remain not entered, and the duty or impost thereof not paid;" and even this provision was dropped after the next act.³ The preamble of the act of March 27th-29th, 1703,⁴ is significant of the inefficiency of the customs administration under the then existing law. Yet the act was superseded in three months, and neither the section conferring upon the commissioners "the same power in the searching for, seizing, securing and prosecuting for goods imported and not duly entered as are by law granted to the commissioners of excise," nor that authorizing them to "procure boats or vessels, and when need shall be, hire men to go in them," was afterward repeated. The unusual development which, after building up for the customs officers such ample powers, left them at the end of eleven years in nearly the same condition in which they were at the beginning, is due to the fact that for the first five years, the period during which the powers of the

¹ 1698, c. 17.

² 1698, c. 16.

³ 1700-'1, c. 7.

⁴ 1702-'3, c. 1. "For the more effectual securing of the payment of the several duties of impost, tunnage of shipping, and excise, arising within this province, according to the rates set in and by the acts and laws now in force for granting and continuing of the same, for the avoiding of disputes, and for direction to the collectors and receivers of the said duties."

customs officers were enlarged the most, the commissioners of impost were also commissioners of excise—a department of the public service in which larger administrative powers have generally been found necessary;—and it is likewise due to the fact that, after the organization of a separate excise department in 1697, the duties of the customs officers were correspondingly lighter. As a matter of fact, the phraseology of former laws, conferring identical powers upon the commissioners of both departments, was left unaltered, through sheer inertia, for several years after their separation took place.

§ 63. *Commodities Taxed.*

The policy of provincial Massachusetts in the selection of commodities for indirect taxation, both imposts and excises, was simple, uniform and correct. Broadly stated, it was to exempt altogether the necessities of life and to tax the conveniences only lightly, leaving the burden of the indirect taxation to be borne by the luxuries; and among luxuries choosing for the heaviest duties those the use of which was oftenest carried to harmful excess. From the first customs act of the second charter,¹ salt, cotton-wool, provisions and all commodities produced in New England were specifically exempted from all duties. Not only were the commodities produced in New England almost exclusively necessities, but the formation of a sort of customs union between the New England colonies was quite in accord with the growing idea of a solidarity of interests between them, which, from the first, Massachusetts had been foremost in recognizing.

That the act of September 8th, 1721–2,² which levied heavy specific and *ad valorem* duties upon certain commodities imported into Massachusetts from New Hampshire and upon others exported from Massachusetts into New Hampshire, was no voluntary departure from this policy, is evident from a con-

¹ 1692–'3, c. 5.

² 1721–'2, c. 5.

sideration of the facts in the case as recited in the preamble to the act in question.¹ The selection for these duties, intended to be prohibitive, of luxuries coming from New Hampshire and necessities going to it, was consistent with the avowed purpose of the act to retaliate severely upon the offending government and in the end brake up its exclusiveness.

§ 64. *English Goods.*

There was, however, one country the productions of which Massachusetts, with shrewd judgment, wished to utilize as the source of a considerable and certain revenue without injuring the trade. From the initiatory customs act of the province² all goods not specifically taxed or exempted were subjected to a small *ad valorem* import duty. By the act of June 18th-19th, 1697,³ a discrimination was made against English goods by imposing upon them a duty more than twice that to which other non-enumerated goods were subjected. And although this rate was reduced one-half for the next three years, the higher rate was then restored, to be maintained uniformly until 1719. A prolonged and bitter controversy took place between the two branches of the general court in that year upon the question of disregarding the king's recent instructions to the governor to withhold his consent from all bills imposing duties upon English goods. The representatives contended pertinaciously and acrimoniously not only for the continuance of a revenue which, in their judgment, the province could not then relinquish without serious inconvenience, but (being

¹ "Whereas, the government of New Hampshire do exact and take two shillings a thousand for every thousand of boards brought down the river commonly called Piscataqua River and transported into this province (though the trees out of which the boards are made grow upon lands within this province, and are cut at mills in the county of York), altho' the inhabitants of this government have equal right with the inhabitants of the province of New Hampshire, to pass up and down the aforesaid river, by grant and purchase; which exaction is therefore altogether unjust and oppressive."

² 1692-'3, c. 5.

³ 1697, c. 3.

pleased to regard their relation to the general court as identical with that of the house of commons to the English parliament) especially for what they consistently if not logically contended was their sole prerogative—the originating of all financial legislation for the province.¹ The council, on their part, justified their resistance by protesting their regard for the best interests of the province in their solicitude to secure the passage of the impost bill in such a form that the governor could consent to it, and the king would not disallow it. Not until it became evident that for once the council were more determined than themselves, did the representatives surrender. From the date of this surrender, though it was understood at the time to be only a waiver of the question for the current year, English goods, and from 1739,² British goods were admitted into Massachusetts free of duty.

§ 65. *Tariff Classification.*

As regards the classification of articles, the early provincial tariffs were much more elaborate than later ones. The most marked example of this tendency to simplification is that of the important commodity wine, which from a division into no fewer than nine classes by the first half dozen acts, gradually passed, from time to time, during more than sixty years, through every smaller number, till, in the last fifteen acts, “every sort of wine” paid the same duty. The administrative gain from this simplification must have been considerable.

The experiment made in the act of November 21st, 1702,³ of selecting from the residue of unenumerated articles “all wrought silks, except black; gold and silver lace, fringe, thread, twist, and buttons; lace made of silk and thread; silk, gimp, hair and thread fringes; all ribbons and necklaces; all

¹ For the history of this controversy in detail, see the copious extracts from the council records in *Acts and Resolves of the Province of Massachusetts Bay*, II., 158–161.

² 1739–’40, c. 13.

³ 1702, c. 7.

cast iron, except military stores, and all shoes, pattoons, gloves and perriwiggs," for the imposition of an enormously increased duty was not repeated, as it was found that by this and the other increases of the duty made by the act trade was discouraged to such a degree that the revenue fell off; while the imposition, by the general act of December 5th, 1705-6,¹ of a heavy specific duty upon negroes was for the avowed purpose of discouraging their importation.

The constant staples during the whole provincial period, upon which specific duties were laid, were wine, rum, (and for most of the time other distilled spirits), sugar, molasses and tobacco, and, until 1753, logwood. Tea imported from other English plantations in America was added to the list from 1756; and for a single year, 1764-5,² a specific duty was laid upon bar-iron.

§66. *Export Duties; Retaliation.*

The only export duties to be found in the history of Massachusetts are those imposed by the law of September 8th, 1721,³ entitled "An Act for laying sundry duties on such goods as shall be imported into this Province from the Province of New Hampshire, and on such as shall be exported from this Province thither." The retaliatory nature of this law, already explained in connection with the subject of imposts,⁴ was emphasized by the selection of luxuries, such as wines and spirits, for import duties, and of necessities, such as grain and provisions, for export duties. The rates were intended to be prohibitory. A specific duty of ten shillings was laid upon every barrel of beef or pork, five shillings upon every hundred weight of bread, one shilling upon every bushel of wheat, and sixpence upon every bushel of Indian corn or meal, and an *ad valorem* duty of ten per cent. upon "all other sorts of

¹ 1705-'6, c. 10.

² 1764-'5, c. 33.

³ 1721-'2, c. 5.

⁴ *Ante*, § 63.

goods, wares and merchandize." The penalty pronounced upon any master of a vessel who should take on board any goods to be transported to New Hampshire before reporting to the impost officers the quantity and value thereof and paying the duties therefor, was the payment of one hundred pounds sterling, "to be recovered by bill, plaint or information, in any of his Majesty's courts of record; the one half of the said forfeiture to be applied for and towards the support of this his Majesty's government, the other half to be to and for the use of him or them that shall inform and sue for the same." The temper of the general court when it passed the law may be inferred from the fact that contrary to its custom in cases where the wisdom of the course was far less problematical than it was here, it set no limit of time to the operation of the act. No record of the repeal of the act is to be found, but it doubtless became a dead letter long before the adoption of the federal constitution in Massachusetts put an end to all state legislation upon interstate commerce.

§ 67. *The Organization of Excises.*

Much more difficulty was experienced in obtaining satisfactory officers for the excise than for the impost, and many more changes were made in the organization of the excise department than in that of the customs; in fact, the trouble with the excise officers was less only than that with the assessors; and it was not so quickly overcome in permanent legislation as that was.

Until 1697 there was but one organization for both departments, the title of the chief officers, while there were more than one, being "commissioners of impost and excise," and, after the reorganization under a single head, "commissioner of impost, excise and tonnage of shipping." The act of June 18th-19th, 1697,¹ provided for a separate organization of the excise department by the appointment of "three fit persons,

¹ 1697, c. 3.

and no more, * * as commissioners and collectors, to have the general inspection, care and management of the said excise office, and whatsoever relates unto the same." The next excise act¹ reduced the number of commissioners to two, while that of June 29th, 1700-1,² provided for one commissioner in each county. The next excise act, that of June 18th, 1701-2,³ presents curious evidence of contemporary dissatisfaction with the work of the excise officers, and of the confusion sometimes existing in the colonial and provincial legislation. By this remarkable act "the justices of the court of general sessions of the peace in each respective county or place within this province * * shall be and are hereby impowered to renew and grant licenses;" "the treasurer of the province shall be the receiver of the said excise, unto whom the respective retailers shall pay in the sum apportioned unto them;" and "the commissioners appointed for collecting and receiving the said excise in the several countys be and hereby are impowered to compound with such retailers for their excise."

§ 68. *A Change of Policy.*

Although the inconsistency of the clause in the last-named act, referring to the treasurer, with that referring to the commissioners is evident, and, as a matter of fact, no provision had been made by law for the appointment of commissioners for that year, yet the revival of all the provisions of the act in June, 1702,⁴ and the reference in the act of November 21st, 1702,⁵ to "the commissioners and receivers that are or shall be named and appointed by this court," while the clause appointing the treasurer to be receiver is omitted, renders it probable that the plan of a commissioner for each county was

¹ 1698, c. 16.

² 1700-'1, c. 8.

³ 1701-'2, c. 15.

⁴ 1702, c. 1.

⁵ 1702, c. 7.

not discontinued through these years. However this may have been, it is certain that the commissioner disappeared with the act of July 31st, 1703-4.¹ This act, annually renewed for the next six years,² was, in its method of vesting the powers to grant licenses and collect the excise, itself a revival of the system which we may presume to have been intended by the act of June 18th, 1701-2,³ and the characteristic feature of which was its resort to the services of a branch of the regular judiciary in the effort to fasten upon each person affected by the excise law the full sum which he ought in justice to pay. That the system was regarded as extraordinary and temporary is evidenced, not so much by the fact that it was enacted for only a year at a time—the practice of the provincial assembly in most of its early legislation—as by many incidental references in the acts themselves, such as that the acts “will be necessary to remain and abide still in force in this time of war,” and “are necessary to be revised and further continued until other and better provision be made.”⁴

§ 69. *The Pseudo-excises of 1710-16.*

Concerning the so-called excises from 1710-11 to 1715-16 inclusive we have already spoken under the head of direct taxation, to which class of taxes they properly belong, from the fact of their having been apportioned in fixed sums among the counties, by the general court, and among the individuals taxed, according to the judgment of the justices. During these years the province, by its anxiety in a time of war to realize a sufficient and certain income from the excise, found itself in a position where there was no excise at all, properly speaking, the place of that indirect tax having been taken by a special direct tax upon a single class of inhabitants. Having

¹ 1703-4, c. 5.

² 1704-5, c. 6; 1705-6, c. 2; 1706-7, c. 1; 1707-8, c. 1; 1708-9, c. 1, and 1709-10, c. 1.

³ 1701-2, c. 15.

⁴ 1708-9, c. 1.

passed through the development above outlined, ending in a period of suspended animation, the excise system of provincial Massachusetts attained what may be regarded as its normal form when, by the act of June 27th, 1716-17,¹ the system of 1700-1 was revived with the single modification of providing for more than one commissioner in each county.

§ 70. *Subordinate Excise Officers.*

As in the case of the impost, the number of subordinate excise officers has never been fixed by law, these points having been left to the discretion of the chief officers. The only feature here demanding attention is the practice that prevailed throughout the period during which the excise was administered by the judiciary, of utilizing the services of regular county and town officers—"grand jurors, sheriffs, under-sheriffs, constables, tythingmen"—as well as "such other persons as shall be appointed by the respective courts of general sessions of the peace" for certain duties in connection with the excise.

From the separate organization of the excise department² to the present time, the commissioners and collectors of excise have been appointed by the general court and commissioned by the governor; although the act of June 16th-29th, 1721,³ in harmony with the tendency already pointed out to fall back in an emergency upon the judiciary, provided that commissioners should be appointed "by the general sessions of the peace, where it shall happen that such commissioners refuse to accept said office, or be removed by death, etc.," to which list of contingencies the court, taught by experience, soon⁴ added a third, "or mismanagement." Subordinate excise officers, like subordinate customs officers, have been appointed by their superiors, with the exception above noted of the

¹ 1716-'17, c. 1.

² 1697, c. 3.

³ 1721, c. 1.

⁴ June 28th-29th, 1726-'7, c. 11.

employment of county and town officers during the judiciary administration.

§ 71. *Qualifications ; Oaths.*

Concerning the qualifications and oaths required of the commissioners of excise while they were still commissioners of impost we have already spoken. The same conventional requirement of "fitness" and the same form of oath, "to deal truly and faithfully therein," were continued in the law providing for the separate organization of the excise.¹ It was not until after the period of the judiciary administration, beginning in June, 1701-2, after four years with separate commissioners, and continuing fifteen years, through the Indian war, that, by the act of June 27th, 1716-17,² in which the final organization of the excise was formulated, a degree of responsible independence was infused into the administration of it by the requirement that, in addition to an oath "to take care of the due execution of this law, and to prosecute the breakers of it," each commissioner should "give bond to the justices at their first general sessions for the peace in their respective counties, with sufficient security, for the faithful discharge of his duty, and that they [he] will duly pay in the money he shall collect to the treasurer of the province for the time being." Finally, by the act of June 26th-28th, 1727,³ the amount of the bond required was fixed at "double the sum that is usually received for excise annually in said county."

§ 72. *Duties of Excise Officers.*

Even after the separation of the excise from the impost, no difference whatever was made in the duties of the commissioners of the respective departments, until, in the act of July 31st, 1703-4,⁴ the commissioner of excise entirely disappeared by

¹ 1697, c. 3.

² 1716-17, c. 1.

³ 1727, c. 1.

⁴ 1703-4, c. 5.

the complete shifting of the administration of the excise upon the justices of the county courts. When, at the end of their fifteen years' administration, the history of the excise as a fully independent department begins, the duties properly belonging to a commissioner of excise were better understood in the province; and in the course of the first three acts of the period then inaugurated, they were developed in the form in which they have since remained. By the law of June 27th, 1716-17,¹ each commissioner must "carefully examine the accompts of every licensed person in his respective county, and demand, sue for, and receive the several sums due from them by this act, and the same shall pay into the public treasury of this province;" by that of June 16th-29th, 1721,² he must make his payments to the treasurer "within six months from the date of his commission, and so from time to time within that space of six months, as long as he shall continue in such office;" by that of June 28th-29th, 1726-7,³ they "shall give in an account under their hands of the particular sums they receive, together with the names of the persons of whom received, unto the treasurer, upon oath," and at the time of receiving any money, the said collectors shall give two receipts, of the same tenor and date, mentioning what sum or sums they have received from every taverner, inn-holder, common victualer and retailer; one of which receipts to be by the same taverner, inn-holder, common victualer or retailer returned to the court of the general sessions of the peace, within the respective counties, at the next session of such court, and the clerks of the said courts shall within twenty days after the receipt thereof, transmit the same to the treasurer or receiver-general."

§ 73. *Powers of Excise Officers.*

The first differentiation of the powers of the commissioners of excise from those of the commissioner of impost appeared

¹ 1716-'17, c. 1.

² 1721, c. 1.

³ 1726-'7, c. 11.

in the act providing for the separation of the two departments,¹ when the commissioners of excise were by implication given the power to farm the excise. After the specific authorization of such a course by the act of June 27th, 1698,² the only mention of farming the excise, for thirty-nine years, is a reference to it as a contingency in the act of July 14th-18th, 1699-1700,³ the first separate excise act under the provincial charter, and in the revival of that act for one year, by the act of June 8th-26th, 1702.⁴ It is difficult to understand why the power "to sue for and recover any sum or sums of money due or to be due from any retailer or retailers" should have been given by the act of June 29th, 1700-1,⁵ to the commissioners of the preceding act⁶ and not to those of the acts that followed it. It is equally difficult to see why, in the event of any brewer's or distiller's neglecting to make entry of goods or to take the oath, as by law required, the power "to enter into the brewery or still-house of such brewer or distiller, respectively, and the dependencies thereof, or other houses, cellars, vaults or places where they shall be informed any beer, ale, spirits or strong liquors, brewed or distilled as aforesaid, are laid with intent to be concealed in elusion of the law, and to search for, seize and secure, in order to trial and conviction, all such beer, ale, spirits or strong liquors,"⁷ should have been bestowed upon the commissioner of excise in an act devolving the proper duties of that officer upon other officers, and this just as the commissioner was about to disappear altogether from the excise system for a period of fifteen years. Upon the reorganization of the excise system in 1716, the powers delegated to the commissioner of excise were those of appointing under-officers

¹ 1697, c. 3.

² 1698, c. 16.

³ 1699-1700, c. 15.

⁴ 1702, c. 1.

⁵ 1700-'1, c. 8.

⁶ 1699-1700, c. 15.

⁷ 1702, c. 7.

upon oath, and inspecting the houses of all such as were licensed or suspected of selling without license.

§ 74. *Excise Classification.*

The same cumbersome detail of classification which was noted in the early provincial impost is found in the excise of the same years; but the process of simplification was here applied much earlier and much more thoroughly than there. For example, wines, after having been scheduled in ten or eleven classes for eleven years, were not classified at all after 1716. The radicalness of this change was doubtless largely due to the intervention of the period of the judiciary administration of the excise, during the last six years of which no schedules at all were made by the general court. As in the case of the imposts, wine and spirits formed the basis of the excise throughout the provincial period; malt liquors, metheglin, perry and cider, the only other commodities that figured in the list during the first decade, disappearing altogether when the excise was handed over to the county judges in 1710, except perry and cider for the single year 1716-7.¹ Nor was any other commodity added to the slender list of wines and spirits until, in 1737,² at the same time that the rates on these were largely increased, an excise was placed upon limes and lemons, coaches and chariots, chaises with four wheels and other chaises, calashes and chairs. Of these added commodities only lemons and limes survived the expiration of that act, being retained on the list, with the addition of oranges in 1748,³ till the end of the provincial period; although calashes, chairs, chaises, chariots and coaches, together with tea, coffee, arrack, snuff and chinaware, were placed upon the excise list by an act passed April 20th, 1750,⁴ but disallowed two years later by the English privy council.

¹ 1716-'7, c. 1.

² 1737-'8, c. 1.

³ 1748-'9, c. 4.

⁴ 1749-'50, c. 21.

CHAPTER III.

THE LOTTERIES.

§ 75. *Private Lotteries in Massachusetts.*

It was during the third quarter of the eighteenth century, at the same time with the land bank hereafter described, and other unsound financial schemes, that the policy of raising public funds by lottery became settled for a time in Massachusetts. To be sure, lotteries were no new thing in the eighteenth century. Not unknown in principle to the ancient Greeks and Romans, and spreading from Italy over continental Europe, in the middle ages, they were introduced into England as early as 1569. During the seventeenth century the passion for this kind of gaming increased to such an extent that in Queen Anne's reign lotteries were denounced as public nuisances. Unfortunately, the act of parliament passed in 1709, prohibiting all private undertakings of this kind, did not apply to the colonies; where, although an assembly of ministers at Boston as early as 1699 denounced them as "cheats," and their managers as "pillagers of the people," lotteries of various forms found a wide and growing patronage. The first legislation in Massachusetts bearing upon the subject was "An Act for the Suppressing of Lotteries," passed November 7th, 1719.¹ The preamble of this act recites that "there have lately been set up within this province certain mischievous and unlawful games, called lotteries, whereby the children and servants of several gentlemen, merchants and traders, and other unwary people, have been drawn into a vain and foolish expence of money, which tends to the utter ruin and impoverishment

¹ 1719-'20, c. 8. Acts and Resolves, II., 149-'50.

of many families, and is to the reproach of this government, and against the common good, trade, welfare and peace of the province; for remedy whereof" it is enacted: 1. That all such lotteries are "public nuisances;" 2. That playing at lotteries is forbidden, and all who set them up or expose them for playing shall be fined two hundred pounds sterling for each offence; 3. That any person convicted of playing at a lottery shall be fined ten pounds sterling for each offence; and 4. That all justices of the peace, sheriffs, under sheriffs, sheriffs' deputies and constables are exhorted to do their utmost to break up the practice.

Fourteen years later it was found necessary to pass a supplementary act.¹ The act of 1719² was found insufficient "to put a stop to the practice, but sundry persons have exposed their estates, as well real as personal, to sale by lotteries projected and the tickets disposed of within this province, reserving the drawing of the lots in some of the neighboring colonies or provinces; whereby the good and wholesome design and true intent and meaning of the aforesaid act is very much eluded and evaded, to the great discouragement of trade and industry, and grievous hurt and damage of many unwary people; for remedy whereof" it was enacted: 1. Whoever sets up a lottery shall be fined five hundred pounds. 2. Whoever aids any lottery by printing, writing, or otherwise publishing an account thereof or where tickets may be had, shall be fined one hundred pounds sterling. 3. Whoever sells, exposes for sale, gives or otherwise disposes of lottery tickets shall be fined two hundred pounds sterling. Provided always: 4. "That this act shall not be construed to extend to any lottery allowed by act of parliament or law of this province."

§ 76. *The First Provincial Lottery.*

The proviso at the end of the above-mentioned law is im-

¹ April 26th-30th, 1733. Acts and Resolves, II., 663-4.

² Chap. 8.

portant: it foreshadows a deliberate change in the financial policy of the provincial government. Pronounced and sweeping as is the denunciation of lotteries contained in the foregoing legislation, and severe as are the penalties prescribed for those who should persist in furthering such enterprises, the framers of these laws saw no inconsistency in prohibiting private lotteries as "public nuisances" and setting up a government lottery to increase the public revenues. It was generally believed that few of the evils connected with private lotteries would attach to a lottery established by public authority and conducted under strict regulations. The need for an increase in the public funds was pressing. The king's instruction against the further issues of bills of credit had dried up at last that perennial fountain of public resources. The returns to the managements of lotteries were believed to be both ample and assured, and there were not wanting numerous precedents of government lotteries, both in England and in some of the other colonies. The Virginia Company had realized thirty thousand pounds from a lottery authorized by James I. in 1612, for the benefit of the English colonies, and since 1709, a government lottery had been annually licensed in England, under certain restrictions, by act of parliament. The preamble of the law establishing the first Massachusetts provincial lottery,¹ recites as the reasons for resorting to this method of raising a public revenue, the great expense of the current year, the protection of the sea coast, the defense of the frontier of New England and the protection of the province of Nova Scotia; and the inhabitants already having been subjected to a heavy tax on polls and estates, and a debt still remaining, the representatives wish to raise the debt in the way least burdensome to the inhabitants.

The amount thus intended to be raised was seven thousand five hundred pounds. The plan of this lottery was that of the

¹ 1744-'5, c. 20. Acts and Resolves, II., 195-'9, January 9th-February 4th 1744-'5.

so-called class or Dutch lottery, in which a certain value is divided into a certain number of unequal prizes, and a certain number of lots or "tickets," each lot giving a chance of winning one of the prizes, are sold for a certain sum each, the aggregate price of the tickets being greater than the aggregate value of the prizes; in distinction from the numerical or Genoese lottery, which has more the character of a wager. In this lottery there were twenty-five thousand blank lots and a like number of "benefit" or prize tickets. The details of the plan for selling and drawing the tickets are given in the law establishing the lottery. An important provision was the one permitting subscriptions to be paid, one-fifth in new tenor bills of credit, or in old tenor bills at the rate of four for one, and four-fifths either in like bills or in bills of credit of other colonies not prohibited by law. All tickets remaining unsold at a certain day were to be taken by the directors on account of the province, and any prizes drawn on them were to be covered into the provincial treasury. By a concurrent vote of the general court¹ the directors were forbidden to sell tickets to any Indian, negro, or mulatto, as such a transaction "might prove of mischievous consequence in many respects."

§ 77. *Remonstrances from England.*

The successful drawing of this lottery for sinking the province debt of seven thousand five hundred pounds sterling was followed by the inauguration of a series of no less than fifteen separate enactments, extending over a period of more than eleven years, from 1749 to 1761, either authorizing certain towns and precincts to set up lotteries for making local improvements of a public nature, such as building or repairing bridges, docks and roads, or removing obstructions to navigation, or establishing provincial lotteries for a similar purpose.² The lotteries were all to be modeled after that of

¹ February, 1744, Votes and Orders, 219.

² 1749-'50, c. 11, to repair Miles bridge in Swanze; 1750-'1, c. 14, to build a bridge over Parker river, at Oldtown Ferry, Newberry; 1755-'6, c. 3, to build a

1744. and appear to have been successfully managed, so as to raise the small sums, ranging from four hundred to two thousand pounds, needed for these purposes. It could hardly have been expected that the frequency with which lotteries were now resorted to in order to realize such small sums, and for local purposes—no fewer than four local lottery acts were passed in 1759-'60—would escape the notice and unfavorable comment of the lords of trade in London, to whom all provincial legislation affecting trade and commerce was regularly referred by the crown, for their recommendations thereon. In fact, they were not slow in signifying their decided disapproval of this kind of legislation.

"We have had under our consideration," write the lords to Governor Bernard, under the date of April 21st, 1761, "the Laws passed in the Province of Massachusetts, between February and April 1760, amongst which there are several, providing for the temporary and inconsiderable services of Ferrys, Roads &c., by Lotterys, which is a mode of raising money, that in our opinion ought not to be countenanced and hardly to be admitted into practice, upon the most pressing exigency of the State, more especially in the Colonys, where the forms of Government may not admit of those regulations and checks which are necessary to prevent fraud and abuse in a matter so peculiarly liable to them.

"We cannot, therefore, but disapprove these Laws upon their general Principles, but when we consider the unguarded and loose manner in which they are in general framed, the Objections are so many and so strong that We should cer-

bridge over Tetticut river, in Tetticut precinct; 1755-'6, c. 24, to pave Boston neck; 1757-'8, c. 14, to build a bridge over the Saco and Pasumscot rivers; 1758-'9, c. 38, to complete the paving of Boston neck; 1758-'9, c. 39, to repair the highway in Roxbury; 1759-'60, c. 10, to repave the causeway on the east side of Sudbury river; 1759-'60, c. 35, to complete the bridge over the Parker river, at Oldtown Ferry; 1759-'60, c. 36, to remove the rocks and shoals in Taunton Great river; 1759-'60, c. 37, to pave Charlestown highway; 1760-'1, c. 15, to complete the repairing of Roxbury highway; 1760-'1, c. 22, to complete the repaving of the causeway on the east side of Sudbury river; 1760-'1, c. 26, to repair Faneuil hall. There was also one to pave Prince street, Boston, the reference to which is not at hand.

tainly have thought it our duty to have laid them before His Majesty for His Majesty's disapprobation were we not restrained by the consideration that the purposes for which they were passed, having been carried into full execution and the Acts had their full operation and effect, some inconvenience might attend the annulling them; but it is our duty to advise that you will not for the future give your Assent to any Laws of the like nature."¹

Mr. Bollan, too, the well-tried agent of the province in London, though he sought to put the best interpretation possible upon the matter before the board, was too keen an observer not to perceive the seriousness of the situation in the minds of their lordships, and too faithful to the best interests of his principals not to warn them emphatically against their continuance of the lottery policy. "Their lordships then passed to another affair," writes Mr. Bollan to the speaker of the provincial assembly, concerning a meeting of the board at which he was present, "and Lord Sandys having in his hand four acts for lotteries, he inveigh'd against them as mischievous in their nature, destructive to labor and industry, and introductive of the spirit of gaming, ever attended with many ill consequences. In excuse for these acts, I observed that the distresses occasioned by the heavy expence of the war, of which the province had taken so large a part, had probably brought these lotteries into use; and the whole board having concurr'd with his lordship in declaring their evil nature, I told their lordships I wou'd take the first opportunity of acquainting the general Court with their sentiments thereupon. It is needless to say that many of the most able statesmen as well as divines have always declared against the use of lotteries, and being fully persuaded that the continuance of them wou'd prejudice the province's desirable character in the minds of some of their best friends, as well as be disagreeable to others, I think it my duty to recommend a total disuse of them."²

¹ Massachusetts Bay, B. T., Vol. 86, p. 44, in Public Record office; quoted in Acts and Resolves, IV., p. 360.

² May 8th, 1761, Felt's Massachusetts Archives, Vol. 22, p. 190.

§ 78. *The Milled-Dollar Lottery.*

Meantime three other lotteries on a much larger scale had been established by law, one for supplying the treasury with twenty-six thousand seven hundred milled dollars,¹ another for raising thirty thousand pounds sterling toward the expense of a military expedition to Canada,² and the third for obtaining funds with which to draw in the still outstanding bills of the land bank.³ None of these lotteries was managed with the success attending that of 1744, upon the plan of which they were all modeled. The reason advanced for establishing the first of them—the need of a speedy supply of the treasury, while the circumstances of the towns had so changed since the last valuation that a just and equal tax could not be laid—appears to have been little more than a pretext. It being found impossible, notwithstanding the mortgaging of a tax of £8,010 for the payment of prizes and the offering of three per cent. interest on prizes unpaid, to dispose of five thousand tickets at the price of three milled dollars per ticket, within two months, as the law required, two supplementary acts⁴ twice extended the time of drawing, allowed the payment of subscriptions in province bills and orders on the treasury in place of the coin at first required, raised the interest on unpaid prizes to six per cent. and finally withdrew the requirement as to the number of tickets to be sold before the drawing. It may have been the ill success of this undertaking that moved the representatives to renew their efforts to break up the traffic in private and foreign lottery tickets within the state. “All the good laws made in Massachusetts against lotteries,” naïvely complain the fathers, “are rendered ineffectual by the lotteries set up in the neighboring governments, and the sale of tickets in Massachusetts.” To the former exemplary fines for publishing in-

¹ 1750-'1, c. 20.

² 1757-'8, c. 35.

³ 1759-'60, c. 2.

⁴ 1750-'1, c. 20; 1751-'2, c. 8.

formation in the interest of private lotteries, or disposing of their tickets, were now added another of not more than forty pounds for receiving or purchasing lottery tickets, and the inducement of complete indemnity from punishment for turning state's evidence.

§ 79. *The Canada Expedition Lottery.*

In his speech of March 2nd, 1758,¹ to the general assembly, Governor Pownall urged that provision be made for meeting the expense of defending the frontiers, maintaining the cruiser King George and sending a military expedition to the eastward. It was to comply with the last request, and as a part of those exertions to fit out an expedition against Canada, which Hutchinson says were the greatest in the history² of the province, that the act of April 29th, 1758,³ was passed, providing for the setting up of a lottery to raise thirty thousand pounds. Thomas Hutchinson and James Bowdoin, two of the best financiers in the province and both afterward governors, had already⁴ been appointed by the council to act in concert with such other managers as the house might elect. Beside the usual details of the Massachusetts lotteries, it was provided that the prizes should be paid in treasury notes to draw six per cent. interest till the province should be reimbursed by parliament; and a tax of thirty-four thousand pounds, to be collected in 1760, was mortgaged as collateral security. The history of this lottery is soon told. It proved a failure. A minute in the council records under date of October 10th, 1759⁵, records a vote of the house that whereas the act passed in the thirty-first year of his present majesty "proved abortive," the managers be directed to pay all moneys by them collected to the province treasurer, and to

¹ Quoted in Acts and Resolves, IV., 142.

² History of Massachusetts, Vol. III.

³ 1757-'8, c. 35, Acts and Resolves, IV., 88-90.

⁴ March 20th, 1758, Acts and Resolves, IV., 403.

⁵ Council Records, XXIII., 77.

make a full report of the affair; and that the treasurer reimburse all holders of tickets after advertising three weeks in the Boston papers.

§ 80. *The Land Bank Lottery.*

On January 4th, 1760, William Stoddard and others, directors and partners of the late land bank, petitioned the general court for the establishment of a lottery to relieve the distress into which they declared they had been brought by the "unhappy circumstances" attending the management of that scheme, and which had been especially aggravated by the destruction of all their papers in the court-house fire—a calamity which the land-bankers were by no means the only persons who sought to turn to their substantial advantage. The result of this petition was the act of February 13th–14th, 1760¹, "To Raise Money by Lottery for Drawing in Such of the Notes of the Land Bank or Manufactory Scheme as are yet Outstanding." The preamble of this act recites the declarations of the petition:—that there were near one thousand pounds in notes of the land bank still outstanding to be redeemed; that by the death of many of that company, the insolvency of others, and the removal of divers of them out of the province (having alienated their estates in the same), the raising of money by assessment on the rest to pay these bills, now much enhanced by the interest, would greatly burden and distress them; and that the loss of the books, accounts and other papers containing the transactions of that company, by the burning of the court-house in Boston, rendered it difficult or impracticable to proportion an assessment for that purpose justly among the remaining directors and partners.

The purposes of the act are declared to be the paying of the outstanding notes of the company, the putting of "a final end to the perplexed affairs of that company, and the preventing of frequent applications to the court relating thereto,

¹ 1759–'60, c. 2, Acts and Resolves, IV., 288–91.

whereby the public affairs of the province have been greatly interrupted heretofore." The act provides for the establishment, on the usual plan, of one or more lotteries to produce three thousand five hundred pounds sterling for redeeming the land bank notes, together with twelve per cent. of that sum for prizes, any surplus remaining after the bills were drawn in to be covered into the provincial treasury. A memorial of Samuel Stevens,¹ the most indefatigable petitioner of all the land bankers, declaring that, under the severe legislation by which the operations of the company had been put a stop to, he had already redeemed three hundred pounds more than his just proportion of the bills, and praying that he might be reimbursed from the very first money realized from the lottery, was continued from date to date under one pretext or another, a kind of treatment to which the old man had long ago become accustomed. But this lottery prospered little better than the land bank itself had done. Repeated postponements of the date² for drawing were without result; and the commissioners appointed long before to wind up the affairs of the bank as expeditiously as possible were again left to take up their weary task of levying assessments upon such of the survivors of that project as were within their reach and collecting what they could.

§ 81. *The Abandonment of the Lottery Policy.*

It may have been to the uncompromising attitude of the lords of trade in their advice to the governor and of Agent Bollan in his recommendation to the speaker of the house towards the lottery policy, to which reference has already been made, that the signal failure of the last-mentioned lottery was due. At any rate, the receipt of the communication referred to was

¹ April 17th, 1761, Council Records, XXIII., 136.

² November 25th, 1761, six months; June 12th, 1762-'3, c. 11, to December 1st. There had previously been a postponement to September 28th, by vote of the council and assembly, Council Records, XXIV., 398.

followed by what appeared to be an unqualified abandonment by the province of the lottery policy, not only as a makeshift in the case of the "temporary and inconsiderable services of Ferrys, Roads, etc.," but as a means of providing for the execution of more important projects with which the government with increasing frequency now found itself called upon to deal. It is true that in 1765 an act was passed¹ to establish a lottery, to raise three thousand two hundred pounds sterling for rebuilding a dormitory of Harvard college. But the permission of the lords to Governor Bernard to affix his signature to that bill was obtained only upon the governor's representation to them of the obligations the government felt itself under to the college, owing to the peculiar circumstances under which the building had been destroyed,² and his assurance that such permission should in no event be advanced as a precedent for other lottery acts.³ And when, seven years later, another act⁴ was passed appointing new managers for this lottery, in place of some deceased and others unwilling to serve, Governor Hutchinson was careful to explain to their lordships that "the act which this act referred to was assented to by Governor Bernard upon special license from his Majesty and the execution of it has been delayed, the Lotteries for finishing a Town Hall in Boston interfering."⁵

¹ June 25th, 1765-'6, chap. 21, Acts and Resolves, IV., 834-'5.

² The dormitory caught fire from one of the fires kindled for the general court, which had adjourned to Cambridge on account of small-pox in Boston.

³ To strengthen his request, Governor Bernard called the attention of the lords to the good results obtained by lotteries in Pennsylvania, the "Academy at Philadelphia" receiving a great part of its support from an annual lottery. See Acts and Resolves, IV., 868, note to 1765-'6, c. 21.

⁴ July 2nd, 1772-'3, c. 16; Acts and Resolves, V., 212-'3.

⁵ Governor Hutchinson to Lords of Trade, August 10th, 1772; Massachusetts Bay, B. T., Vol. 81, O. o., 48. For the scheme in detail of this lottery, see Acts and Resolves, V. 267, quoted from Executive Records of Council, 1765-'74, p. 650.

§ 82. Events Leading to its Revival.

For six eventful years the province of Massachusetts Bay now managed its financial affairs without resort to the seductive expedient of a lottery. The Boston massacre in 1770, had greatly excited the people; the destruction of the tea in Boston harbor in 1773, the opposition to the port bill in 1774, the representation of the colony in the general congress, the seizure of the arsenal at Charlestown by the militia, the adjournment of the general court to Concord and its reorganization there as a provincial congress, were the most prominent events immediately preceding the revolution. The first blood of that war was shed upon Massachusetts soil; the battle of Bunker Hill followed, and the colony was fairly involved in the war more than a year before the declaration of independence. The attitude that Massachusetts assumed upon the question of declaring independence, and the part she took in the struggle to make independence a fact, are not matters of dispute. The expenses of the colonial government were now enormously increased, and every expedient had to be tried in order to meet them. The taxes had been greatly augmented. Loans had been contracted in increasing amounts. In 1775 the first of a new series of bills of credit had been issued. Three years after the first blood of her citizens had been shed in the cause of American freedom, Massachusetts again turned to the lottery as a means of raising funds for continuing the war.

§ 83. Tentative Lottery Legislation.

On April 28th, 1778, the house of representatives, in recommending the report of a committee appointed the day before, to report a resolve for giving the soldiers of the Massachusetts contingent in the continental army thirty pounds each, directed the committee to bring in besides a resolve for granting the gratuity, another for raising by lottery the sum of two million dollars. On the 30th the committee reported two resolves,

according to instructions, except that in the latter resolve the amount to be raised by lottery was fixed at one million nine hundred and ninety-eight thousand dollars, from the sale of three classes of tickets (numbering one hundred and eleven thousand each), at four, six and eight dollars each, respectively, according to a scheme laid down in the resolve. On May 1st, the resolves were recalled by the house and recommitted. A joint committee the same day reported two resolves, which were passed in concurrence; the one relating to the raising of the money by lottery being as follows:

“Whereas this Court have, this day, passed a Resolve for paying certain Gratuities to such Officers & private Soldiers who inlisted into the fifteen Continental Battalions raised by this State & who inlisted before the 15th day of August last, for the term of three Years or during the War, And as it is thought expedient that a Lottery or Lotteries should be set on foot for raising a Sum of Money for the purpose afores^d

“Therefore Resolved, That a Sum, not exceeding Seven Hundred & fifty Thousand Dollars be raised by a Lottery or Lotterys, by a Deduction of fifteen $\frac{1}{2}$ Cent upon the Amount of the Ticketts.

“That Oliver Wendell Esqr. Mr Henry Hill, Thomas Crane Esqr. Caleb Davis Esqr. & Mr Ezekiel Lewis, or any three of them, shall be Managers of said Lottery or Lotteries, & who shall be Sworne to the faithful discharge of said trust, & shall give Bond to the Treasurer of this State, in the Sum of One thousand pounds each for the performance of the trust hereby reposed in them: which said Managers shall make, & publish in the Boston & Worcester News-Papers, & also in the Hartford Paper a Scheme for said Lottery or Lotteries, as soon as may be, agreeable to this Resolve; & they shall also therewith publish all necessary rules & regulations for the Management thereof; That all Prizes of Fifty Dollars & upwards, shall be paid by Treasury Notes for the amount of Such Prizes, bearing date the last day of drawing said Lottery (or each of 'em, if two), & payable, with Six $\frac{1}{2}$ Cent $\frac{1}{2}$ annum Interest, on the first day of Jan^y A D: 1783—; also, that all smaller Prizes shall be paid by said Managers in Money; & also that all Prizes shall be paid without any deduction.”¹

¹ Felt's Massachusetts Archives, Vol. 218, p. 419.

This resolve was supplemented by the act of June 16th, 1778,¹ "to prevent the Forging, Altering or Counterfeiting the State Lottery Tickets," by which it was provided that any person convicted of being a party to the circulation of counterfeit tickets "shall be punished by being set on the gallows for the space of one hour, with a rope round his neck, and shall pay a fine not exceeding one thousand pounds, at the discretion of the court before whom the conviction may be, to the use of this state; and suffer not more than twelve months' imprisonment, nor less than three; and be publicly whipped, not exceeding thirty-nine stripes; or shall suffer only a part of the aforesaid punishments, at the discretion of the court before whom the conviction shall be, according to the circumstances of the offence; and shall pay to the person or persons defrauded treble damages;" and a reward of thirty pounds was offered for information leading to conviction.

§ 84. *The Great Lottery of 1778.*

Of the seven hundred and fifty thousand dollars which was the limit of the sum to be raised under the foregoing resolve, the managers attempted to raise only one hundred and forty-three thousand dollars—that being the specified percentage on nine hundred and fifty thousand dollars, the total value of the tickets offered for sale. The Lottery was arranged in four classes.²

A resolve of September 26th, 1778, directed the managers to take the most effectual methods for disposing of the tickets

¹ 1778-'9, c. 5.

² The scheme of the first class of this lottery was advertised as follows:

"THE General Assembly having passed a Resolve for raising a Sum of Money, not exceeding 750,000 Dollars, for the Benefit of those Officers and Soldiers who enlisted into the Fifteen Continental Battalions raised by this State, appointed *Oliver Wendell*, Esq; *Mr. Henry Hill*, *Thomas Crane*, Esq; *Caleb Davis*, Esq; and *Mr. Ezekiel Lewis*, Directors of a Lottery for that Purpose, who are sworn to the faithful Discharge of the Trust reposed in them.

"The following Scheme is accordingly offered to the Public, which it is hoped

in the first class until the first day of December next, at which time, should any tickets remain unsold, the managers

will meet with their Approbation and Encouragement.

MASSACHUSETTS—STATE LOTTERY.

CLASS, No. I.

Consists of 25000 Tickets, at 6 Dollars each, 6374 of which are Prizes of the following Value, *vis.*

No.	Dollars	Dollars.
1 of	4000 is	4000
1 of	2000 is	2000
2 of	1000 are	2000
10 of	500 are	5000
50 of	200 are	10000
100 of	100 are	10000
200 of	75 are	15000
460 of	50 are	23000
5550 of	10 are	55500
1 Exclusive of the above Prizes, the first Number shall be drawn, } will be entitled to		300
2 The last drawn No. will be entitled to		200
6376 Prizes		127000
18624 Blanks		23000
25000 Tickets, at 6 Dollars		150000

"The Directors flatter themselves they shall be able soon to complete the First Class, when they consider the Money to be raised is to be applied to the benevolent Purpose of rewarding those Officers and Soldiers who have endured Want, Hardship and Toil, and hazarded every Danger for the Safety of their Country, and who, when Government, through a Series of unfortunate Events, was unable in some Instances to comply with its Promises for their Support and Comfort, nobly scorn'd to shrink from the Post of Danger, and, like their great Leader, resolved never to survive the Ruin and Desolation of their Country.

"Public and seasonable Notice will be given of the Time and Place of Drawing, and when finished, a List of the Prizes will be published in the Continental Journal, and the Money will be paid (without any Deduction) to the Possessors of Benefit Tickets, (within twenty Days after a Publication of a List of Prizes) in the following manner, *vis.*

"All Prizes of Fifty Dollars and upwards will be paid in Treasurer's Notes for the amount of such Prizes, bearing Date the last Day of Drawing said Lottery, and payable on the first Day of January, 1783, with Interest at Six per Cent per Annum. All Prizes of Ten Dollars will be paid in Current Money.

"Prizes not demanded within Twelve Months after they are drawn, will not be

were to take the numbers of such tickets, seal and deliver them to the state treasurer, and proceed at once to the drawing.¹

§ 85. *Successive Classes.*

By January 26th, 1779, the managers were ready to proceed to dispose of tickets of the second class, and a resolve of that date² directed them to proceed with the sale with all possible dispatch, "and in order to Expedite the sale they are Directed to Lodge a Proportionable number of Said Tickets in the hands of Some Suitable Person in the Severall Towns in this State, and that the Sale be Continued until The seventeenth day of March next, unless the tickets are sooner disposed of * * * and the said Managers are hereby Directed to Proceed to the Drawing said Second Class without Delay, and it is further Resolved that the Managers of the said Lottery, be and they hereby are permitted To Receive for the Tickets in the Second Class of Said Lottery the Two Emissions of the Continental Currency Dated May 20th, 1777, and April 11th, 1778."

The drawing of the second class, advertised in the *Independent Chronicle* of February 4th, 1779, to commence March 17th, consisted of twenty thousand tickets at ten dollars each, five thousand seven hundred and fifteen of the tickets being prizes varying from one prize of five thousand dollars to four thousand two hundred and eighty prizes of fifteen dollars each. "The Managers having found a very great but needless expence to government, attending the drawing of the blanks in the first class, without the least advantage to the paid, but will be deemed as generously given for the Purpose aforesaid, and will be applied accordingly.

"Tickets are to be had of the respective Directors at their Houses and Stores, where constant Attendance is given."—*Independent Chronicle*, June 25th, 1778. Quoted in Acts and Resolves, V., 1364.

¹ Felt's Massachusetts Archives, Vol. 219, p. 314.

² Printed Resolves, January session, 1779, ch. lxxx.

adventurers," it was announced that only the prizes would be drawn in this class. On March 1st, the sale of the tickets of the second class being "nearly completed," the managers were empowered¹ to receive the above-described emissions of bills for tickets in the third class. The scheme of the third class, advertised in the *Independent Chronicle* of March 11th, consisted of twenty thousand tickets at fifteen dollars apiece, five thousand seven hundred and fifty-one of which were prizes, varying from one prize of ten thousand dollars to three thousand five hundred and fifty-six prizes of twenty-five dollars each. "The present Class being in many Respects better calculated for the Benefit of the Adventurers, than the two former Classes, the Managers doubt not of a ready Sale of the Tickets, * * *: They therefore propose to commence Drawing said Lottery by the Middle of May; and as many Persons were disappointed of purchasing in the Second Class, they have now an Opportunity of laying out their Money on better Terms, if they apply seasonably."

A resolve of May 3d, 1779,² directs the managers to proceed with the selling until the 20th inst., unless the tickets were sooner disposed of, and to proceed to the drawing without delay. The managers thereupon gave notice that the drawing would begin on the day aforesaid, in the representatives' chamber, and that after that date no tickets would be sold. Drawers of small prizes in the first and second classes were urged to purchase tickets in the third class speedily, or, if not inclined to purchase, they were requested to call for their prizes before June 1st, as it was "not probable the managers" would "be in cash, to discharge the same," between June 1st and August 1st, "they being obliged, at that time, to deposit the prescribed money (received for tickets) in the loan office." At this point occurred a temporary interruption in an undertaking which thus far had proceeded successfully and

¹ Felt's Massachusetts Archives, Vol. 221, p. 354.

² *Ibid.*, Vol. 222, p. 285.

continuously. The managers representing to the general court that they had commenced drawing the third class agreeable to the order of the general court, but that they were much embarrassed by the necessity of paying into the treasury the moneys received for the sale of tickets, which, "being of the dead Emissions," must be transferred into the loan office by June 1st, they were recommended to suspend the drawing of the third class till June 3d.¹

The fourth class, advertised in the *Continental Journal and Weekly Advertiser* of July 1st, 1779, was a repetition of the third, which, the managers announce, "met with general approbation." The drawing was fixed by a resolve of October 5th, for the second Wednesday in December. The resolve was published by the managers, who, at the same time, earnestly requested their agents in the various towns of the state to exert themselves in the sale of tickets. Holders of benefit tickets in former classes were also urged to apply speedily for payment. But popular interest in the lotteries was beginning perceptibly to decline. On November 30th,

"It being Represented to this Court by the Managers of this States Lottery that by reason of the multiplicity of publick Business in which they have Necessarily been Ingaged it will be out of their power to be ready to proceed to the Drawing the fourth Class of Said Lottery at the time which has been sett for that purpose and allso that a Considerable Number of Tickets still remains unsold—Therefore Resolved, that the Manegers aforesaid be & they hereby are directed to postpone the drawing the fourth Class of Said Lottery, until the 20th day of January Next * * * and it is Further Resolved that the managers aforesaid be & they hereby are directed to Suspend Carrying on any more Classes of Said Lottery."

This postponement was immediately advertised by the managers, who again urged the drawers of prizes in the former classess to apply for the money, as it would not be

¹ Felt's Massachusetts Archives, Vol. 170, p. 130.

² Printed Resolves of the November session, 1779, Chapter cxix.

"in the power of the managers to pay off any prize in the first class, unless applied for before the 15th day of January next." In the *Independent Chronicle* of January 13th, 1780, the managers announced that they intended "Drawing the Fourth and last Class of said Lottery on the 26th of this Month, at the Selectmens Room in Faneuil-Hall." The last official record pertaining to this important and, on the whole, remarkably successful series of financial enterprises,¹ prior to the adoption of the state constitution and the inauguration of a new financial regime, is a resolve of March 24th, 1780,² directing the managers to pay into the public treasury a certain number of prizes drawn in the first class of the lottery which had not been demanded, and the time for paying which, according to the managers' publication, had expired, and to proceed in like manner with any prizes of the other three classes when the time for the payment thereof should have expired, "such prizes being deemed as Generously given to the State."

§86. *Late Minor Lotteries.*

Three other lotteries of less magnitude than the "state" lottery, grew out of the war before the inauguration of the government under the constitution. On May 1st, 1779, two petitions to the general court, representing, the one³ that the destruction of buildings in Charlestown by the enemy fur-

¹ Printed Resolves, Chapter lxvii.

² The acts of February 11th, 1779 (1778-'9, c. 35), April 14th, 1779 (1778-'9, c. 42), and May 3^d, 1780 (1779-'80, c. 45), empowered the state treasurer to issue his notes at 6% for sums not exceeding £21,450, £81,570, and £49,830 respectively, an aggregate of £152,850, or \$794,250, with which to pay the prizes of \$50 and upwards in these four lotteries. Had all the tickets in the four series been sold, the amount realized would have been \$950,000, and 15% of this sum, the proportion allowed by the law for *all* the prizes, is only \$142,500. But not quite all the tickets were sold, and among those sold only prizes of \$50 and upwards were to be paid in treasurer's notes. The provision for \$794,250 in treasurer's notes may therefore be considered unnecessarily ample.

³ Original in Felt's Massachusetts Archives, Vol. 222, p. 249.

nished an opportunity to widen and straighten the streets of that town, and the other¹ that the war had ruined the business of the proprietors of the long wharf in Boston so that they were unable longer to maintain it in good repair, and each praying for the benefit of a lottery, were favorably acted upon in a resolve; and the lotteries were established by the act of June 23d,² "For Raising by Lottery the Sum of Sixty Thousand Pounds, for the Purpose of Widening and Amending the Streets of the Town of Charlestown; and also for Raising by Lottery the Sum of Two Hundred and Fifty Thousand Pounds, for the Purpose of Repairing the Long Wharfe in the Town of Boston." The schemes of these lotteries, which were quite similar to those of the other Massachusetts lotteries, were published in the *Independent Chronicle* of February 3d, 1780. By both the resolve authorizing the lotteries and the act appointing the managers, the commencement of the lotteries was forbidden till after the completion of the "state" lottery.

In the spring of 1780 the condition of the public road from Westfield "through that rough and but little cultivated Tract of Land, well known by the name of the Green Woods," to Great Barrington—the chief east and west artery of inland communication and transportation in the state—always bad, had become much worse from the increased use made of the road in transporting supplies of provisions and other public stores to the Continental army on the Hudson, as well as in transporting great quantities of commodities belonging to inhabitants of New York and western Massachusetts to the seaboard. The general court, therefore, acting upon a petition of certain inhabitants of Berkshire county and others, granted the petitioners leave, by a resolve of June 2d, to bring in a bill for establishing a lottery to raise money for repairing the road, although the state itself had already spent during the last two years over one thousand pounds sterling in the repair of the

¹ Original in Felt's Massachusetts Archives, Vol. 222, p. 251.

² 1779-'80, c. 4.

roads through the Green Woods. The bill introduced in accordance with this resolve for raising a sum of not more than one hundred thousand pounds sterling, was, after several commitments in both houses, passed as the act of June 14th,¹ "For Raising by Lottery the Sum of Two Hundred Thousand Dollars" for the purpose mentioned. To the growing disfavor with which lotteries were now held in the state, and which was plainly indicated by the increase in this act of the deduction to be made from the whole sum for prizes from the customary fifteen per cent. to twenty per cent., was added in the present instance so strong a conviction, on the part of many, that the money to be raised would be used for personal rather than public advantage, that at least one petition² praying for the repeal of the act was sent to the general court, and three of the five managers designated by the act declined to serve. "Nothing but the most urgent necessity to effect a purpose of public utility," argue the three managers, "can justify the raising money by Lottery." And again: "Lotteries are a Burden in the community." These protests were unavailing, and the vacancies were filled by the selection of new managers; but before the lottery could be completed the state constitution went into effect.

¹ 1780, c. 1.

² Original in Massachusetts Files, "House," No. 640.

CHAPTER IV.

CURRENCY AND BANKING.

§ 87. *Colonial Paper Money: Massachusetts.*

The paper money of the Anglo-American colonies has been less neglected by writers upon fiscal topics than most other features of their financial history. We shall not here enter into a detailed account of the Massachusetts bills of credit. We can only summarize their history and record our impressions of the financial policy in which they played so prominent a part.

The policy of the government's issuing paper obligations in Massachusetts antedates somewhat the provincial charter. It was to provide for the payment of her colonial troops, and to meet other charges incurred in the unsuccessful expedition against Canada, in the inter-colonial war between the possessions of France and England, in 1690, and amounting in all to the sum of forty thousand pounds sterling, that, for the first time in the history of any of the colonies, the government of Massachusetts issued treasury notes, payable in one year, with the plausible idea of merely anticipating for a few months the payment into the treasury of the annual tax.¹ Although punctuality in redeeming these notes was observed for a number of years, the pressure of public expenses arising from the

¹ For some characteristic arguments in support of the action of the government in issuing the bills of credit, and in favor of the substitution of "paper money" for "stamp silver," see copious extracts in Trumbull's "First Essays at Banking," from the rare pamphlet, "Some Considerations on the BILLS OF CREDIT now passing in New England" (Boston Athenæum Tracts, c. 55), the authorship of the two parts of which Trumbull attributes to the Rev. Cotton Mather and Capt. John Blackwood respectively.

Indian wars, which for the first quarter of a century of its history almost continuously distressed the province, induced the general court, in 1704, to extend the time of redemption by taxes to two years, afterwards to a longer period, and finally to thirteen years. It is impossible to say how much farther this process of discounting the future might have been carried, had not a check been placed upon the operations of the court by royal instructions limiting the period for redeeming tax-bills to the year 1741, and prohibiting the issue of new ones until all those outstanding should be redeemed, except by acts subject to the king's approval before they should take effect.

§ 88. *Postponement of Payment.*

The idea in arranging the postponements was so to distribute the taxes over a number of years that the burden to be borne by the taxpayers in any one year would be sensibly lessened. With this end in view, the taxes pledged for the redemption of bills, and falling due from year to year, were so arranged that for several years subsequent to 1715-6 the amount to be raised for this purpose was exactly twenty-two thousand pounds sterling per year. Then for several years the amount annually called for was only sixteen thousand or seventeen thousand pounds sterling; then, when the natural effects of such a cumulative system began to be felt, it rose to twenty-four thousand pounds sterling, and even much more; though the average per year for a period of over forty years, or until 1757-8, when the last of the bills were redeemed through the operation of other causes and a different financial policy, was something less than twenty-eight thousand pounds sterling. There were some exceedingly wide divergences from this average; for example, in 1739-40, and in 1741-42, for neither of which years were any taxes at all pledged; in 1725-6, when taxes to the amount of over seventy-eight thousand pounds sterling were mortgaged; and in 1748-9, for which unfortunate

year taxes to the amount of no less than one hundred and three thousand, eight hundred and sixty-eight pounds, five shillings, were pledged. The royal instructions had before this been disregarded under the pressure of increased expenses, and they were finally withdrawn at the earnest solicitation of the governor.

§ 89. *Two Opposing Policies.*

As soon as the mortgaged taxes began to fall due, the same reluctance to resort to actual taxation that had led to the introduction of the treasury notes in the last decade of the seventeenth century again manifested itself in propositions to levy only a portion of the amount due in taxes, and to trust to other sources of public revenue—to the imposts, the excises, tonnage and lighthouse tolls—for the remainder. These propositions invariably came from the house of representatives, and were as invariably opposed by the governors and their councils. The reasons for an opposition which, while it was for many years unavailing, was based on sound financial and moral principles, are nowhere better stated than in a speech of Gov. Joseph Dudley, to the house of representatives, in answer to repeated attempts on their part to reduce the amount named in the tax-bill of 1715-6 from twenty-two thousand pounds sterling, the sum which had been pledged for that year, to one-half that figure.

"At the last session of this Assembly," said the governor, "I earnestly recommended to you the raising of twenty-two thousand pounds sterling, granted and determined by two former assemblies of the Province, for the drawing in of that sum of the Province bills raised and emitted for the support of the late war and troubles with the Indians, which said acts of Assembly¹ were passed by the Representatives and the Council, and presented to the Governor to be signed and passed the seal in due manner, and accordingly in that form are sent home and are there recorded and accepted by the

¹ October 25th, 1710; May 30th, 1711.

Right Honorable Lords of the Council of Trade and Plantations, as I was commanded by the instructions for the Government; of which everybody concerned being apprized, I made no doubt you would without delay have proceeded to apportion and levy it, as those acts direct, as also the Impost and Excise, which are thereby in like manner determined to be raised, in aid of the said taxes severally. You are also sensible how well and thriftily, as also successfully, those sums were disbursed and applied to defray the necessary expenses of the war, and with what honor your Bills passed for the support of such heavy charges, without any disparagement, and it is easy to see how the credit of those Bills must needs sink and fail, if the present or any future Assembly shall upon any pretense whatever, break in upon those clauses in the said Acts for the time of payment, which I am willing to give my opinion we have no power, to do, nor have we any reason to project it; for that we are in peace and very capable to discharge our debts, in such proportions as they are determined. And since we have neither power nor need to delay the payment, I am of opinion we shall discourage the public faith of the Province to that degree, that our Bills will fail in their value, to the very great injury of everybody that have taken them, or are in possession of them. And in this we are justified by his Majesty's most gracious speech from the Throne—'That nothing can contribute more to the support of the credit of the nation than a strict observance of Parliamentary engagements.' I therefore earnestly recommend the consideration of the Tax, Impost and Excise to your present Resolves, and hope you will make no delay, but pass through them in two or three days, not admitting any other business this session."

§90. *The Policy of the Representatives.*

The house remained unmoved, and the bill was passed for a tax of eleven thousand pounds sterling. Similar proceedings in succeeding years ended in the same way. The financial policy thus forced upon the government by the provincial house of representatives, and persisted in by that body for nearly half a century with great show of jealousy for the maintenance of its alleged prerogative in controlling the financial affairs of the province, has never received from historians

the attention it deserves. If simplicity were the only requisite of a commendable fiscal policy, that of the Massachusetts house of representatives would deserve nothing but commendation. It consisted simply in a persistent refusal to raise by direct taxation one penny more than a sum calculated, not always accurately, to be just sufficient, when added to all the other revenues of the province, to cancel maturing obligations, and in the abandonment of the constantly-increasing current expenses of the government to be met by larger and larger issues of bills of credit. A careful tabulation of the financial transactions of the province from 1715 to 1757 shows that only once during the whole period of forty-two years did the budget contain an appropriation for running expenses,¹ and once provision for including in the tax a sum unappropriated,² and that only once was there an unanticipated surplus (1756-'57, three thousand pounds sterling, three shillings and four pence).

§ 91. *Banking Schemes.*

With the extension of the period for the redemption of the treasury notes, depreciation set in—not on account of a redundancy of paper money, but owing to the impairment of public confidence in the solvency or in the good faith of the government. The lack of acquaintance, on the part of the provincial financiers, with the principle which had already been formulated in Gresham's law, did not prevent the rapid disappearance, in accordance with the workings of that principle, of gold and silver money from the province, when they were brought into competition with a medium of less exchange value, even in quantities comparatively small at first; nor did it prevent the consequent contraction of the currency to an embarrassing degree. The rise of exchange with England and all other countries, which by 1713 had become con-

¹ June, 1752-'3, £8,142 4s.

² 1753-'4, £4,250.

siderable, was attributed to the general bad state of trade, this in turn being ascribed to the scarcity of a circulating medium rather than to its true cause, the disturbing influence of a depreciated currency. It was therefore thought that the most obvious way of striking at the root of the trouble was to increase commercial activity by the issue of more paper bills.¹ The historian Hutchinson,² himself a participant in the discussions of the house of representatives and the leader of a small but important party who proposed the heroic measure of drawing in the paper money and depending upon barter until the exiled coin could be recalled in the natural course of export trade, tells us that there were two principal schemes before the country for increasing the paper currency. A very numerous party had revived a project, originally published in London, in 1684, for the issue, by an incorporated company, of bills of credit which all the members of the company should engage to receive, but at no ascertained value as compared with silver and gold, real estate to a sufficient value being bound as security that the company would fulfil its engagements. "This party," says Hutchinson, "generally consisted of persons in difficult or involved circumstances in trade, or such as were possessed of real estate but had little

¹ On March 3, 1700, the council negatived the report of a committee of the general court, recommending that the government strike copper pence, and that "a Sutable Number of Meet persons, with their Associates, their Heirs &c for the space of [blank] years, be allowed, appoynted, and impowred to Erect & Set up a Bank of Credit, & to make & Emit Bills of Credit, at their owne proper cost & charge, from two Shilling Bills to three Pound Bills, in such proportion as they see meet, to any vallue and not to take more then three p^{c} ann. for Intrest.

"That all other persons be Inhibited making any of the Like Bills of Credit, or Setting up Such Bank dureing s^d Terme.

"That no person shal or may buie any of s^d Bills under the vallue therein exprest, on penalty of forfeiting the Vallue of the same, so exprest in s^d Bill or Bills."—Felt's Massachusetts Archives, Vol. 101, p. 184.

² The principal authorities for this period are Hutchinson and the pamphleteers. Trumbull speaks of "nearly thirty pamphlets and tracts printed from 1714 to 1721 inclusive, for and against a private bank or a public bank, the emission of bills of credit, and paper currency in general."—First Essays at Banking, p. 28.

or no ready money at command; and it may well be supposed that the party were numerous."

§ 92. *An Ideal Solution.*

Another party were happy in the belief that they had discovered an ideal solution of the problem in a plan by which the government should become its own banker, loaning its bills to any of the inhabitants who would mortgage their estates as security for the gradual repayment of the bills with interest, in a term of years, the interest, payable annually, to be applied to the support of the government—"an easy way of paying public charges, which," as Hutchinson says, "no doubt they wondered that, in so many ages, the wisdom of other governments had never discovered." The first party falling in with this scheme as the lesser of two evils, a bill was finally passed, though not until after a long struggle, in which the controversy spread throughout the province, dividing towns, parishes and families, for issuing fifty thousand pounds sterling, to be put into the hands of trustees and loaned on good security, for five years only, to any of the inhabitants, at five per cent. interest, one-fifth of the principal to be paid annually.

§ 93. *The Policy Determined.*

Thus was inaugurated a monetary policy which, not to go into details, it is sufficient to say was destined, in spite of constantly accumulating evidence of its utter viciousness, to become the accepted resort of an infatuated people, in every spasm of commercial embarrassment, for the next quarter of a century. So confident were its promoters of its entire sufficiency to the demands of the occasion that it was a matter of no difficulty to raise one thousand pounds sterling with which to purchase the resignation of one governor in order that another more favorable to the scheme might be appointed in his stead. The advice of Governor Shute, in his first message to the house, in 1716, that immediate measures be taken to

correct the prevailing unhappy state of trade, was understood to mean nothing else than a further emission of bills of credit. The sum now to be issued, for the encouragement of husbandry, fisheries and other branches of trade, was made one hundred thousand pounds sterling in place of the previous fifty thousand pounds sterling; the time for repayment was extended to ten years instead of five; and, lest some portion of the province should be cheated of its share in the blessing about to be dispensed, it was provided that the whole sum, placed in the hands of commissioners appointed for each county, should be apportioned in the same ratio that the taxes were. In fact the most popular argument, if not the soundest, advanced in favor of the emission of the bills, was that the people might have something in which to pay taxes. The condition of trade had become distressing in the extreme, owing to what the most ardent inflationists confessed themselves willing to admit was a too hearty adoption of their policy by the other New England governments, especially by Rhode Island, which issued one hundred thousand pounds sterling in bills to loan to its inhabitants for twenty years. It is unnecessary to say that neither the Massachusetts emissions above referred to, nor an additional one of sixty thousand pounds sterling in 1727, when the time for repayment was extended to thirteen years, produced anything more than a temporary and delusive improvement in the state of affairs. A confederation of Boston merchants to protect themselves from the influx of foreign paper resulted in nothing better than the issue by the company of one hundred and ten thousand pounds sterling in notes redeemable in ten years in silver at ten shillings per ounce; so that at the end of the operation the nominal sum of paper in circulation in the province was greater than ever before, and silver soon rose to twenty-seven shillings.

§94. *Effects of that Policy.*

Concerning the disastrous effects of the presence of such an

immense mass of unstable public obligations upon trade and the general condition of the people, neither contemporary nor later writers have been silent. The printed and manuscript writings of the time—pamphlets, sermons, letters—are filled with graphic descriptions of the distress to which individuals and communities were reduced, and with vehement complaints against the wealthy and the influential in society and the state, who were believed to be, in some way not well understood, responsible for the general suffering.

“Trade,” says the historian Minot, “was in a manner reduced to a state of barter, and above all, the temptation every man was under, almost in self defense, to avail himself of an advantage in his contract, not guarded against by the parties at the time when it was made, was daily corrupting the morals and good faith of the whole body of people. One class censured another for these results. As trade has the first control over and is first affected by currency, so the merchants seemed to stand foremost for censure. Had they adhered to the laws for supporting the credit of the bills, by giving no more for silver and gold than the several governments [of the New England colonies] had valued them at, and so putting no additional advance upon their goods, the husbandman and the tradesman, it was said, would not have been obliged to raise the prices of product and labor. The assembly shared in the reproach for issuing a currency in its nature unstable and incapable of remaining at par.”

The disastrous effects of this depreciation were felt most severely by the class of those who had some money at interest, or who depended for their support upon fixed incomes. The Rev. Daniel Appleton, in his fast-day sermon, 1748, instances as a case typical of many in the land, that of “an ancient widow whose husband died more than forty years ago, who had three pounds sterling a year settled upon her instead of her dower, which three pounds sterling would at that day and at the place where she lived procure towards her support the following articles: two cords of wood, four bushels of Indian corn, one bushel of rye, one bushel of malt, fifty pounds of

pork, sixty pounds of beef, which would go a considerable way towards the support of a single woman. Now she can at most demand but seventeen shillings and three pence new tenor, which is about one-eighth her original three pounds, and be sure won't purchase more than one half or one quarter of the above necessities of life; and this she must take up with, because there is no remedy in law for her."¹

§ 95. *A Project Revived.*

It was at this juncture (1739) that the remnant of that party whose zeal and resentment had only been increased by the apparent success of their opponents in 1714 and 1716, again came forward with their favorite scheme of a private company empowered to issue bills of credit secured by pledges of real estate. To Thomas Hutchinson belongs the credit of first presenting to the people of the province the policy which, as the successor of the miserable expedient of inflation so long persisted in, was destined at no distant day to vindicate itself as the true policy for a state involved in extraordinary financial embarrassment. Hutchinson, as he had done on the former occasions, again urged the withdrawal of all the bills in circulation, proposing to borrow in England, upon interest, and to import into the province a sum in silver sufficient to redeem them from their possessors and so to furnish the inhabitants with a stable medium sufficient in quantity to meet all the demands of trade, while the equal distribution of its repayment over a long period of years would render the burden of consequent taxation tolerable. But the proximity of the year 1741, which, as the limit beyond which the royal instructions had prohibited the postponement of the payment of the bills of credit, had been burdened with taxes amounting to nearly thirty thousand pounds sterling, or ninety thousand pounds in paper, counter-balanced any sentiment which the unhappy experience of the people during the

¹ Quoted by Minot, *History*, I., p. 85.

last twenty-five years may have created in favor of hard money, and the proposition was rejected with something approaching unanimity; since the absence of instructions against the emission of bills of credit by private companies, left the way open for the continuance of the practice of inflation under conditions which were believed to promise results less disastrous than those which had been entailed by unlimited government issues.

§ 96. *The Land Bank Party.*

Hutchinson says that the "notable company" of eight or nine hundred persons at the head of which the projector of the land bank proposed in 1714 now placed himself, and which was to give credit to one hundred and fifty thousand pounds sterling of lawful money to be issued in bills, while it included some few of rank and good estate, was mainly composed of plebeians, persons of low condition and small estate, many of them, perhaps, insolvent. Each member was to pledge real estate in proportion to the sums he subscribed for and took out, or, if he possessed no real estate, to give a bond with two sureties, no personal security of more than one hundred pounds to be taken from one person. Every subscriber was to pay three per cent. interest on the sum withdrawn, and one-fifth of the principal yearly. There were to be ten directors and a treasurer, chosen annually. Payments of principal and interest might be made in bills, or in products and manufactures of the province, "or *Logwood*, though from *New Spain*," at such rates as the directors might set from time to time—a feature no doubt suggested by the colonial practice of receiving taxes in "country pay," and which gave to the new project the popular name of the "manufactory scheme." Such was the project urged before the general court in 1740, on the plea that, by the furnishing in this way of a medium and instrument of trade, not only would the inhabitants in general be better able to procure province bills

for the payment of taxes;¹ but foreign and inland trade would be quickened and invigorated. Even in 1714 the number of those in favor of a private land bank had been so large that they were defeated only by the amalgamation of the hard money party with the public bank party; and it had ever since been steadily increasing. Beside the eight hundred subscribers to the bank now proposed, the needy portion of the province in general were favorable to the scheme. Indeed, it was soon clear that the great majority of the house of representatives were either subscribers or friends of the project, and it has ever since been known as the "land-bank house." The company was incorporated, and although, as Hutchinson tells us, "men of estates and the principal merchants of the province abhorred the project and refused to take the bills" of the company, an agreement among the merchants to issue for circulation their own notes redeemable in silver or gold at distant periods,² much like the scheme of 1733, was attended with no better results than that had been; for "great numbers of shopkeepers, who had long lived on the fraud of a depreciating currency, and many small traders gave the bills credit."

§ 97. *Land Bank Troubles.*

The dangers inherent in such a concern now began to be manifest. "The directors—it was said by vote of the company—became traders, and issued what bills they thought proper, without any funds or security for their repayment. They purchased every sort of commodity, however much of a drug it might be, for the sake of putting off bills; and by one means or another a large sum, perhaps fifty thousand pounds sterling or sixty thousand pounds sterling, was soon in circulation."³ What was to be done? The well-meant

¹ Minot, History, I., says, "for the ostensible purpose of supplying a currency when the bills of credit issued by the government should be absorbed."

² Minot, I., says, "payable on demand in silver, or bills of credit equivalent, according to the current rate."

³ Hutchinson, History of Massachusetts II.

efforts of Governor Belcher to blast the bank¹ probably approached too near to an illegitimate exercise of authority to make very much head against a project with which perhaps a majority of the inhabitants of the province were in open or secret sympathy. A last resort remained in an appeal to parliament, whose power to control all public and private persons and proceedings in the colonies, our loyalist historian² cannot refrain from reminding us, no one then ventured to dispute. Here sounder financial views obtained; and the efforts of an agent to convince the committee that the course of the directors was justifiable, failed completely.

§ 98. *The Land Bank Doomed.*

The declaration of parliament that the act of 6 George I., Chapter 18, prohibiting the emission of bills of credit by private corporations in England, did, does and shall extend to her colonies and plantations in America, fell like a thunderbolt upon the bank. Nor was this all. Not only was the bank dissolved by the act, but the holders of its bills were given the right of action against every director or partner for the recovery of the sums expressed on their face, together with interest. In the despair of the moment, some of the partners were for defying the law and continuing the issue of bills; but calmer counsels prevailed, and the directors, realizing the paralyzed condition of the company, for once adopted the wisest course in throwing themselves upon the mercy of the general court. The business of winding up the disordered affairs of this unfortunate institution hung like a millstone about the neck of the court for many years, it being impossi-

¹ "Not only such civil and military officers as were directors or partners, but all who received or paid the bills, were dismissed. The governor negatived the person chosen speaker of the house because he was a director of the bank, and afterward negatived thirteen newly elected councilors who were directors or partners, or reputed to favor the scheme."—Hutchinson, II. See also Belcher's speech, November 22nd, 1740, and January 9th, 1741.

² Hutchinson, II.

ble, from the nature of the case, even in the end to do more than mete out conventional justice in a rough and unsatisfactory way to the legal representatives of those individuals who had been defrauded by the insidious dishonesty of the directors. We are not concerned now with the question of the constitutionality of these clauses in the above mentioned act, which gave to an enactment of twenty years before a meaning and intent from the date of its passage differing from those presumed to have existed in the minds of its originators, and which, by making these partners of the company severally liable for the redemption of all the bills issued since the incorporation of the company, created between the partners and the holders of the company's bills a relationship differing from that claimed to have been established by the instrument of incorporation. What is sufficiently plain is that the sound financier must strongly commend the action of parliament in refusing to be influenced by those arguments always advanced by the makers of bills that depreciate—especially by that time-worn and specious argument of the injustice of protecting mere speculators at the expense of those who have felt obliged to part with the bills at a discount—to make the amount of liability less than the face of the bills. If our state and national financiers, when called upon to deal with similar problems half a century later, had followed the example here set, they would have enjoyed a higher reputation to-day for honesty and sagacity. As between the two methods of inflation which had now been successively tried in Massachusetts, our choice must be decidedly for the former; for if that scheme was objectionable in that it hampered the government with some of the most perplexing questions of banking, the latter was still more so in that it endowed a banking company with some of the most important functions of government.

§ 99. *Inherent Evils.*

Not the least of the evils inherent in an irredeemable cur-

rency is the inequality in the distribution among the holders of it of losses and gains consequent upon the impossibility of graduating the quantity of it in circulation to the commercial needs of the community. Successive expansions and contractions of the circulating medium are ordinarily due to causes only in a limited degree, and after the lapse of a considerable time, susceptible to modification by political influences. Even when they are brought about by direct act of the government, they are dictated by motives other than, if not inconsistent with, that of preserving the financial equilibrium already existing among the people. It is, therefore, impracticable for the government, in the one case to prevent, or in the other to avoid producing, those changes in the numerical relation between the volume of paper in circulation and the volume of business to be done, by every one of which a fortuitous and demoralizing change in the relative values of all men's property is wrought. Had not the people of Massachusetts during a period of more than thirty years been schooling themselves to endure with whatever of equanimity they might be able the ill effects of such a system, the foundations of social order among them would have been seriously shaken if not overturned by the violent transition from the contraction that followed the collapse of the land bank to the expansion made necessary by the wars of Shirley's administration. The very cause of their embarrassment, however, was to become the means of their relief.

§ 100. *The Redemption of the Bills.*

The efforts made by the New England colonies, especially by Massachusetts, in the late expedition against Cape Breton, were so extraordinary that an equitable claim arose upon Parliament for compensation.¹ The province agent was successful in his effort to convince that body, through the committee to whom the petition of Massachusetts for reimburse-

¹ Minot, History.

ment was referred, that the depreciation in value which the bills had undergone was as much a charge upon the people as though it had been levied in the form of a tax; and the question of the amount for which the province should be reimbursed was happily settled in favor of a sum in sterling equal to the face value of the bills issued to meet the expenses of the expedition against Cape Breton. A threatened division among the ranks of the hard-money men at home was produced by the introduction in the house of representatives of a bill suggested by Hutchinson, now speaker of that body, by which it was proposed to make a speedy end of the bills of credit by applying the one hundred and eighty thousand pounds sterling of coin expected from England to redeeming, at the rate of eleven for one—the lowest rate of exchange in London for one or two years previous—one hundred and ninety-eight thousand pounds sterling of the two million two hundred thousand pounds sterling then outstanding, and laying a tax upon the year 1749 to sink the remaining two hundred and twenty thousand pounds sterling. The disruption of the party was happily averted by compromise; while, from the fact that the Hutchinson bill, as finally submitted and passed, was conditioned on the grant by parliament of the one hundred and eighty thousand pounds sterling, a contingency at a distance and not altogether certain, but little opposition was encountered from those who feared a derangement of trade from the substitution of coin for paper. The news which was received soon afterward, that the grant had actually been made by parliament, was greeted with more threatening demonstrations; but the arrival of the money produced no embarrassment except in those colonies, such as Rhode Island and Connecticut, whose governments declined the invitation of Massachusetts to conform their currency to hers. Successive grants by parliament for other expenses incurred by the province in defense of the king's government, supplemented by more liberal taxes on the part of the people, enabled the gov-

ernment to sink the last of its bills of credit in 1757-58, and the spectre of inflation was laid for more than a quarter of a century.

§ 101. *The Transition to Loans.*

Hutchinson briefly sketches the history of the transition from the bills-of-credit policy in Massachusetts to the loan policy. From the first introduction of paper money, says that ardent advocate of coin, it had been the custom of the government to provide for public charges by an issue of bills, and to grant a tax for the payment of the sum issued, to be levied and collected into the treasury in future years. The bills being all exchanged now for silver imported from England, and provision being made by law that no bills of credit should ever afterwards pass as money, there was difficulty in providing money for the immediate service of the government, until it could be raised by tax. Few people were at first inclined to lend to the province, although they were assured that they would be paid in a short time with interest. The treasurer was therefore ordered to make payment to the creditors of the government in promissory notes, payable to bearer in silver in two or three years, with lawful interest. This was really better, continues our historian, than any private security; but the people who had seen so much of the bad effects of the former paper money from depreciation, could not consider this as without danger; and the notes sold for silver at a discount, which continued till it was found that the government punctually performed its promises. From that time public security was preferred to private, and the treasurer's notes were more sought after than those of any person whomsoever. This was the era of public credit in Massachusetts Bay.¹

§ 102. *The Loan Policy Established.*

In accordance with the policy thus inaugurated, a loan of

¹ Hutchinson, *History of Massachusetts* III., p. 10.

five thousand pounds sterling was authorized by the act of June 21st, 1750;¹ and during the thirty years immediately following no fewer than fifty other loans were authorized, in sums varying as widely as from two thousand one hundred and fourteen pounds sterling in 1754-5² to one hundred and ninety-seven thousand pounds sterling in 1765-6,³ the only departure from the loan policy during this period being an issue of ten thousand pounds sterling in bills of credit in 1753-4.⁴ In 1761 two issues of bills were made, one on January 31st,⁵ of thirty thousand pounds sterling, and the other on April 18th,⁶ of forty thousand five hundred pounds sterling; and shortly after,⁷ a third issue of sixty thousand pounds sterling was authorized—all three on the strength of parliamentary grants not yet received. The political events of 1775, completely changing the financial relation of the provincial government to the English parliament, led not, indeed, to the abandonment of the loan policy, but to a revival along with it of a dependence upon bills of credit. A series of ten issues in 1775-6 and 1776-7, the smallest of which, twenty thousand pounds sterling,⁸ and the largest, two hundred and six thousand pounds sterling,⁹ were both passed on the same day, December 26th, 1776, again flooded the country with bills of credit to an amount of very nearly one million pounds sterling. Besides this, four loans aggregating two hundred thousand pounds sterling were authorized; and taxes aggregating nearly four hundred and seventy five thousand pounds sterling were

¹ 1750-'1, c. 1.

² 1754-'5, c. 9.

³ 1765-'6, c. 9.

⁴ 1753 '4, c. 24.

⁵ 1760-'1, c. 23.

⁶ 1760-'1, c. 27.

⁷ 1761-'2, c. 3.

⁸ 1776-'7, c. 26.

⁹ 1776-'7, c. 27.

laid—in all a sum of over one million five hundred thousand pounds sterling in two years—a portion of it, however, already depreciated. An earnest discussion, in 1777, of the proposal to call in all the bills of credit and substitute therefore interest-bearing treasury notes, ended in the issue of seventy-five thousand pounds sterling in such notes.¹ From 1778, in which year was passed the last act prior to the adoption of the federal constitution by Massachusetts for the emission of bills of credit, except in exchange, the policy of the commonwealth to raise money solely by loans and the revenue, which is mainly from direct taxes, was firmly established. Coeval with this event the history of Massachusetts as a British dependency ends, and the history of Massachusetts as a member of the American union begins.

¹ 1777-'8, c. 19.

CONCLUSION.

§ 103. *The Provincial Finances.*

That the mass of the people—those of the poorer sort comprising the majority—had gained little or no practical wisdom from the financial history of the colonial period, is evident enough from the history of the financial legislation of the provincial period; for now that the influence of the governor and council, owing to the change in their political relation to the house of representatives and to the people, wrought by the provisions of the provincial charter, was no longer paramount in legislation, it is to the influence of the representatives themselves that the prevailing character of that legislation is to be attributed. To the causes that combined to deplete the revenue under the colonial system—the timidity displayed in the financial legislation, the laxity of the financial administration and the practice of permitting taxes to be paid in “specie”—must now be added the long series of disagreements between these bodies, which, beginning almost as soon as the government was organized under the new charter, and continuing, with increasing bitterness, from time to time quite up to the revolutionary period, was the cause of very great embarrassment to the government and of prolonged suffering among the people.¹

¹ It was fairly precipitated by the attempt of the house to cripple the power of the council by inserting in the bill for a tax upon polls and estates in July, 1703, a clause restricting draughts upon the treasury for incidental charges to £30. The controversy usually took the form of a refusal by the house to pass the tax acts, even when the taxes had been mortgaged by previous issues of bills of credit, unless the council would yield the point in dispute, whatever it might be. Between June, 1706, and September, 1731, the treasury was often empty for periods varying from a few weeks to two years at a time, owing to the refusal of the representatives to pass tax laws.

§ 104. *Criticism of the Policy.*

An unprejudiced review of this controversy throughout the period of its extent, the whole tedious history of which may be found scattered through the journals of the council and the house, leads to the conviction that the action of the council was uniformly more honorable, more sound financially, and better adapted to secure the prosperity of the province than that of the representatives, who, apart from a natural impatience at meeting with steady opposition to every one of those features of their usual policy of which mention has been made as doing much to deplete the colonial revenues, appear in nearly every instance of disagreement to have been actuated more by jealousy of the governor and council as representing the royal authority, than by any real appreciation of the financial needs of the hour, or, it must be confessed, by any genuine regard for the best interests of the commonwealth. Only on the hypothesis that a higher social ideal is realized when individualism is carried to such an extreme that debtors, on the sole ground of the excess of their numbers, may repudiate with impunity contracts voluntarily entered into with their creditors, and that one generation may recklessly discount the resources of the next, can the general financial policy of the house of representatives of the province of Massachusetts Bay be defended.

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“The most extensive work which has ever been done on the Archives of the State was accomplished between 1836 and 1846 by the Rev. Joseph B. Felt . . . The result was 241 volumes [now 244] of what are known as the MASSACHUSETTS ARCHIVES . . . Having been subjected in parts to considerable wear in the forty years that had intervened, about one-half of them . . . were in 1882–3 repaired in binding . . . and they now rest in excellent order in the new cases in the Archive room.”—*Report of Committee on Records, 1885.* An acquaintance with such of the vast number of original documents in these archives as bear upon his line of work is absolutely indispensable to any one essaying to write in any department of the history of Massachusetts. Together with the various other series of records in the custody of the Secretary and the Treasurer of the Commonwealth, they form such a body of records, many of them now printed through the wise liberality of the state, and nearly all of them classified and indexed, as is possessed by no other American commonwealth.

55.—“Massachusetts, or the First Planters of New England, the end and manner of their coming thither, & abode there: in several Epistles. Boston, New England: 1696.”

A rare pamphlet, sometimes known as “Dudley’s Letter to the Countess of Lincoln,” concerning “all our matters” in Massachusetts from the first settlement to the date of the writing, March, 1630-’1. The imperfect copy in the Columbia College library is without a title-page, and contains but 32 of the original 56 pages.

56.—“Money the Sinews of Trade. The State of the Province of the Massachusetts-Bay Considered with respect to its Trade for want of a Medium of Exchange sufficient to manage it,” etc. Boston: 1731. 8vo., pp. 16.—*fac simile* reprint in Lenox Library.

57.—“New News from Robinson Crusoe’s Island, in a Letter to a Gentleman at Portsmouth.” Boston: 1720. 16mo., pp. 8.

“By an advocate of a large emission of bills of credit, and against the majority in the Council and the supporters of Gov. Shute in his contest with the popular party.”

58.—“News from the Moon. A Review of the State of the British Nation,” etc. Boston: 1721[?]. 16mo., pp. 8.

59.—“Observations occasioned by reading a Pamphlet, intituled, A Discourse concerning the Currencies of the British Plantations in America.” London: 1741. 8vo., pp. 23.

60.—“Observations on the Finances of Massachusetts.” Boston: 1786. 8vo. —American Antiquarian Society.

61.—“Observations on the Nature and use of Paper Credit and the peculiar advantages to be derived from it, in North America,” etc. Philadelphia: 1781.—American Antiquarian Society.

62.—“Observations on the Scheme for 60,000 l in Bills of a New Tenour.” Boston: 1738.—American Antiquarian Society.

63.—“Objections to the Bank of Credit lately Projected at Boston, being a Letter upon that Occasion, to John Burrill, Esq.; Speaker of the House of Representatives.” By Paul Dudley. Boston: 1714.

A “Postscript” was added after the author was informed that “the Bankers had new modeled their Projection, and Reformed it, as they reckon, in two Articles.” American Antiquarian Society. The objections “to a *private* bank of credit—a ‘partnership bank,’ ‘set up and carried on without a *charter* from the Crown,’ and ‘without the knowledge and leave of his Majesty’s Government of this Province’—were clearly presented and forcibly urged.”—*Trumbull*.

64.—“Path to Riches. An Inquiry into the Origin and Use of Money, and into the Principles of Stocks and Banks, To which are subjoined some Thoughts respecting a Bank for the Commonwealth.” By James Sullivan. Boston: 1792. —American Antiquarian Society.

65.—“Postscript to a Discourse concerning the Currencies of the British Plantations in America.” 1740.—American Antiquarian Society.

66.—“Records of the Colony of New Plymouth.” 12 vols. Boston: 1855, '6, '7, '9, '61. 4to.

67.—“Records of the Governor and Company of the Massachusetts Bay in New England.” Boston: 1853-'4. 5 vols. 4to.

The transcription and printing of these two series of records by the state, a task involving a prodigious amount of labor, has rendered easily accessible the original records of the vast body of miscellaneous business which, during the seventy-two years covered by the colonial governments of Plymouth and Massachusetts Bay, came before the general courts for legislation or adjudication, including records of many matters properly belonging to the financial history of the commonwealth, of which records are not known to exist elsewhere.

68.—“Reflections On the Present State of the Province of the Massachusetts-Bay in General, And Town of Boston in Particular; Relating to Bills of Credit And to Support of Trade by Them: As the same has been lately represented in several Pamphlets.” Boston: 1720. Sm. 8vo., pp. 22.—Boston Public Library.

69.—“Report on Direct Taxes.” By Oliver Wolcott.—American State Papers, Vol. 7 (Finance, Vol. 1), No. 100.

70.—“Severals relating to the Fund Printed for divers Reasons, as may Appear.” Boston: 1682.

“This tract is so rare that it apparently has escaped the observation of every Massachusetts historian or antiquary since the time of Thomas Prince. Perhaps no perfect copy of it is extant.”—*Trumbull*. The one examined by the author of “First Essays,” in the Watkinson Library, Hartford, Conn., “contains, on a single sheet in pot quarto, the first eight pages of the tract, and is without a separate title-leaf or imprint.”

71.—“Some Considerations on the Bills of Credit now passing in New-England. Addressed unto the Worshiptul, John Philips Esq. Published for the Information of the Inhabitants.” Boston: 1691. 12mo., pp. 23.

“These ‘Considerations’ end on p. 9; and pp. 11-23 are occupied with ‘Some Additional Considerations, Addressed unto the Worshipful Elisha Hutchinson, Esq. By a Gentleman that had not seen the foregoing Letter.’” “A noteworthy, but hitherto nearly unnoticed, pamphlet . . . in support of the action of the government in the issue of bills of credit, and to advocate the substitution of ‘paper money’ for ‘stampt silver.’ . . . In these [last] few pages the emission of bills of credit is defended, and the advantages of a resort to paper as a substitute for silver are set forth with considerable ability and address.”—*Trumbull*. Referred to by Felt as Boston Athenæum Tract C 55. *Trumbull* attributes the authorship of “Some Considerations” to the Rev. Cotton Mather, and that of “Some Additional Considerations” to Capt. John Blackwell.

72.—“Some Considerations Upon the several sorts of Banks Proposed as a Medium of Trade: and Some Improvements that might be made in the Province, hinted at.” Boston: 1716. 8vo., pp. 16.

“Excessively rare.”—*Trumbull*. Opposed to both private and public bank projects, and advocates the issue of public bills to be loaned to the towns at 5% interest.

73.—“Some Observations on the Bill intituled, An Act for granting to His Majesty an Excise upon Wines, and. Spirits—distilled, sold by Retail or consumed within this Province, and upon Limes, Lemons, and Oranges.” Boston [?]: 1754. 16mo.

74.—“Some Observations relating to the Present Circumstances of the Province of Massachusetts-Bay; Humbly offered to the Consideration of the General Assembly.” Boston: 1750. 4to., pp. 20.

75.—“Some Proposals to benefit the Province.” Boston: 1720.—American Antiquarian Society.

76.—“Speeches of the Governors of Massachusetts, from 1765 to 1775; and the Answer of the House of Representatives, to the same, With the Resolutions and Addresses for this Period.” Boston: 1818.

Very scarce. Known as the “Massachusetts State Papers.”—Boston Public Library.

77.—“The Case of His Majesty’s Province of the Massachusetts Bay in New England, with respect to the Expences they were at in taking and securing Cape Breton.” London: 1744. Folio, pp. 4.

78.—“The Colonial Laws of Massachusetts, reprinted from the edition of 1660, with Supplements to 1672. Also the Body of Liberties of 1641.” Reprinted in *fac simile* by the state. Boston: 1889.

79.—“The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672, with the Supplements through 1686.” Reprinted in *fac simile* by the state. Boston: 1887.

80.—“The Crisis.” By the Rev. Samuel Cooper. Boston: 1754. 8vo. Opposed to the “Excise Bill.”

81.—“The Distressed State of the Town of Boston,” etc. By John Colman. Boston: 1720.

82.—“The Distressed State of the Town of Boston Once more Considered. And Methods for Redress humbly proposed. With Remarks on the pretended Country man’s Answer to. . . The Distressed State of Boston &c. With a Schaeeme for a Bank laid down: And Methods for bringing in Silver Money, Proposed.” By John Colman. Boston: 1720. 16mo., pp. (2) 22.

83.—“The Eclipse.” Boston [?]: 1754. 8vo., pp. 8.

Opposed to the bill “which requires every Person to render a publick Account of his private Consumption of Liquors, upon Oath.” “Why are we so strenuously

exerting our selves against the Encroachments of the French? Why are we plunging our selves into Debt by Armaments and Expeditions, but for the sake of Liberty? And what should we gain by all, could we suppose . . . the forces employed to defend us against a foreign Yoke must be paid by taxes as *grievous and oppressive* as the subjects of an arbitrary Power groan under?"—Pp. 4+5. Lenox Library. Not in the Brinley catalogue.

84.—"The Melancholy State of the Province considered in a Letter From a Gentleman in Boston, to his Friend in the Country." Boston: 1736.—American Antiquarian Society.

85.—"The Monster of Monsters: A true and faithful Narrative of a great Surprise and Terror of His Majesty's Good Subjects: Humbly Dedicated to all the Virtuosi of New-England. By Thomas Thumb, Esq." Boston: 1754. 8vo., pp. 24.

A satirical account of the debate in the Council upon the "Excise Bill," after its passage by the House. Ordered by the legislature to be burned.

86.—"The Path to Riches." Boston: c. 1750.

87.—"The Present Melancholy Circumstances of the Province Considered," etc. Boston: 1718-'19. 16mo., pp. 16.

88.—"Trade and Commerce Inculcated, in a Discourse Showing the Necessity of a Well-governed Trade, in order to a Flourishing Common-Wealth, With some proposals for the bringing Gold and Silver into the Country for a Medium of Trade [and] for supporting the Credit of the Paper-Currency. By Amicus Republicæ." Boston: 1731. 8vo., pp. 58.

B.—SECONDARY AUTHORITIES.

89.—"An Historical Account of Massachusetts Currency. By Joseph B. Felt, Boston: 1839." 8vo., pp. 259.

Perhaps the earliest writer to attempt a systematic presentation of any department of the financial history of Massachusetts, Mr Felt enjoyed exceptional opportunities for obtaining trustworthy information upon this subject from his long and very valuable connection with the records in the office of the secretary of state. The large mass of facts bearing upon the history of the Massachusetts currency, which makes his book indispensable to every investigator of the subject, was mostly gleaned from this source. The arrangement is a simple chronological one. The author's few attempts at the discussion of financial principles, though, like his narrative, lacking in literary merit, are in the main sound.

90.—"A History of the Bills of Credit or Paper-Money issued by New York, from 1709 to 1789." By J. H. Hickcox. Albany: 1866.—American Antiquarian Society.

91.—"An Historical Sketch of the Paper-Money issued by Pennsylvania." By H. Phillips, jr. Philadelphia: 1862.—American Antiquarian Society.

92.—“Commentaries on the Laws of England.” By Sir William Blackstone. Philadelphia: 1878. 8vo., 2 vols.

93.—“Historical Account of Connecticut Currency, Continental-Money, and the Finances of the Revolution.” By Henry Bronson. New Haven: 1865.

In Vol. I., papers of the New Haven Colony Historical Society.—American Antiquarian Society.

94.—“Historical Collections, being a General Collection of Interesting Facts, Traditions, Biographical Sketches, Anecdotes, &c., Relating to the History and Antiquities of Every Town in Massachusetts. . . . By John Warner Barber. Worcester: 1841.” 8vo., pp. 632.

95.—“Historical Memoir of the Colony of New Plymouth,” 1620–1675. By Francis Baylies. Boston: 1830. 2 vols.

96.—“Historical Sketches of American Paper Currency.” By H. Phillips, jr. 2 vols. Roxbury: 1866.—American Antiquarian Society.

97.—“Historical Sketch of Continental Paper Money.” By S. Breck. Philadelphia: n. d.—American Antiquarian Society.

98.—“Historical Sketch of the Finances of Pennsylvania.” By T. K. Worthington.

Vol. II., No. 2, of the Publications of the American Economic Association. A rather fragmentary summary of an interesting and instructive development in financial history.

99.—“History of Massachusetts, from the Landing of the Pilgrims till the Present Time.” By George Austin. Boston: 1876.

100.—“History of Massachusetts from 1620 to 1820.” By John Stetson Barry. Boston: 1855–’7. 3 vols.

101.—“History of the New York Property Tax.” By John C. Schwab.

Vol. V., No. 5, of the Publications of the American Economic Association. The best sketch of the financial history of an American commonwealth that has yet appeared.

102.—“History of the United States of America.” By George Bancroft. New York: 1885.

103.—“Notes on Ante-Revolutionary Currency and Politics.” By A. H. Ward. Boston: 1860.

In July number *New-England Historical and Genealogical Register*.

104.—“Public Debts; An Essay in the Science of Finance.” By Henry C. Adams. New York: 1887.

105.—“Records of the Company of the Massachusetts Bay in New England. From 1628 to 1641. As Contained in the First Volume of the Archives of the Commonwealth of Massachusetts.” Cambridge: 1850. 8vo., pp. cxxxviii+107.

Comprises Vol. III. of the “Transactions” of the American Antiquarian Society. The “Records” have since been printed entire by the state, but the “Prefatory

Chapter" of 138 pages, by Mr. Samuel F. Haven, contains more information concerning the history of the company prior to the transfer of the charter than has been brought together by any other writer.

106.—"Remarks on the Early Paper Currency of Massachusetts." By Nathaniel Paine. Cambridge: 1866.

107.—"Report of the Commissioners on the Condition of the Records, etc., in the Secretary's Department." Boston: 1885. 8vo., pp. 42.

Valuable as describing particularly many of the sources for original information concerning the history, both general and financial, of the commonwealth.

108.—"Statistics and Economics." By R. Mayo-Smith.
Vol. III, Nos. 4 and 5, of the Publications of the American Economic Association.

109.—"Taxation in American States and Cities." By Richard T. Ely. New York: 1888.

Like most of Professor Ely's work, popular and not unscientific.

110.—"The First Essays at Banking and the First Paper Money in New England." By J. Hammond Trumbull. Worcester: 1884. 8vo., pp. 40.

Privately reprinted from the Report of the Council of the American Antiquarian Society October 21, 1884. Valuable for period from 1650 to 1721. Based upon Hutchinson and Felt, Massachusetts public records, and rare pamphlets in the Boston Athenæum, the Library of the American Antiquarian Society, Worcester and the Watkinson Library, Hartford.

111.—"The General Property Tax." By Edwin R. A. Seligman.
Vol. V., No. 1, of "Political Science Quarterly."

112.—"The History of Tariff Administration in the United States." By John Dean Goss.

Vol. 1, No. 2, of "Columbia College Studies in History, Economics and Public Law."

113.—"The Puritan Commonwealth." By Peter Oliver. Boston: 1856. 8vo.

NOTE.—In the above bibliography no reference is made to works in general finance, such as those of Cohn, Leroy-Beaulieu, Roscher, Schäffle, Wagner, etc.

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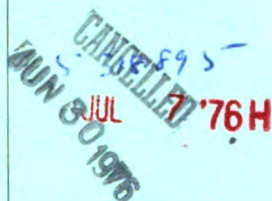
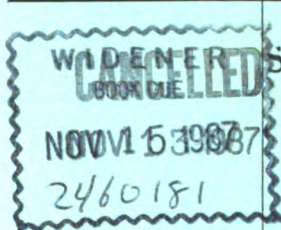
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